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No. 354

[redacted] C. ROBICK, JOSEPH [redacted] STRUNDY, and [redacted] R. DARTON,
Appellants,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES
DRAINAGE DISTRICT, etc., et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

W. H. WATSON,
SAMUEL PASCO,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 554

H. C. RORICK, JOSEPH B. GRUNDY AND J. R. EASTON,
Appellants,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT OF JURISDICTION.

Statement, pursuant to paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, of the jurisdiction of the Supreme Court of the United States to review upon appeal the above entitled cause:

(a) The Statutory Provisions Believed to Sustain the Jurisdiction.

To sustain the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon ap-

peal, appellants rely upon Sections 238 and 266 of the Judicial Code, as amended (28 U. S. C. A., Sections 345, 380), and upon the decree herein as a final decree denying an injunction in a suit to restrain the enforcement, operation or execution of State statutes of the State of Florida, to wit: Chapter 14717 of the Laws of Florida of 1931 and Chapter 17902 of the Laws of Florida of 1937, by restraining the action of officers of such State in the enforcement or execution of such statutes, and dismissing the bill and supplemental bills, the validity of the State statutes being attacked upon the ground that they impair the obligation of a contract between the Board of Commissioners of Everglades Drainage District and plaintiffs herein as holders of its outstanding bonds in violation of Article I, Section 10, of the Constitution of the United States.

(b) The Decree Sought to be Reviewed.

The decree appealed from is dated August 2, 1938, and was entered and filed of record August 4, 1938. The date upon which the petition for appeal was presented was November 22, 1938.

The decree was one pronounced by a specially constituted District Court of three judges convened to hear an application for an interlocutory injunction, and upon such hearing the Court by the decree appealed from denied the application and dismissed the bill and supplemental bills of complaint.

(c) The Statutes of the State of Florida, the Validity of Which is Involved on This Appeal.

Act of the Legislature of the State of Florida of the year 1929, being Chapter 13633 of the Laws of Florida of 1929, reported in official edition, Laws of Florida, 1929, General Laws, Vol. 1, p. 146.

Act of the Legislature of the State of Florida of the year 1931, being Chapter 14717 of the Laws of Florida of 1931, reported in official edition, Laws of Florida, 1931, General Laws, Vol. 1, p. 194.

Acts of the Legislature of the State of Florida of the year 1937, being Chapter 17902 of the Laws of Florida of 1937, reported in official edition, Laws of Florida, 1937, General Laws, Vol. 1, p. 370.

A summary of the pertinent provisions of these statutes follows:

In order to lay the foundation for the Court's understanding of the following summary of the statutes which it is claimed impaired the obligation of the bond contract, we first set forth briefly a summary of the original Everglades Drainage District Statute, Chapter 6456, Acts of 1913, Laws of Florida, Vol. 1, p. 129, as amended during the time when the bonds of the District were authorized to be issued and were issued, which defines the obligation of the bondholders' contract. As amended from time to time down to and including the year 1919, the Everglades Statute was re-enacted in the Revised General Statutes of Florida, of 1920, as Article 4, Division 1, Title 7, Sections 1160 to 1188, inclusive, pages 702 to 749, inclusive.

Section 1160 created the District and defined its boundaries. Section 1161 constituted as the governing board the Governor, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida, and their successors in office, the same five state officials who are trustees of the Internal Improvement Fund with all the powers of a body corporate, including the power to sue and be sued, and to borrow money, while Section 1162 defined their powers as to the necessary work of draining and reclaiming the lands of the District, and Section 1163 gave the Board the power of eminent do-

main. Section 1164 imposed and levied annual drainage taxes on the lands in the District, and said section at page 730, provided that the lands within said District held by the Trustees of the Internal Improvement Fund shall be subject to the taxes thereby imposed, and the said Trustees in furtherance of the trust upon which the said lands were held, were thereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise. The taxes under this Section 1164 were progressively increased by Chapters 7862, Acts of 1919, p. 154, Vol. 1; 8413, Acts of 1921, p. 64, Vol. 1; 9119, Acts of 1923, p. 9, Vol. 1; and 10026, Acts of 1925, p. 14, Vol. 1, Laws of Florida, which Acts also increased the amount of bonds which might be issued under Section 19 of the original Act or Section 1178 of the Revised General Statutes, its codification, as amended in 1919. Section 1165 of the Revised General Statutes defined generally the use to be made of the proceeds of the acreage tax so as to include the repayment of loans and the creation of a sinking fund for the payment of bonds and interest. From these acreage taxes the specific appropriation in Section 1183 for the payment of bonds was made. Sections 1167 and 1176, inclusive, provided the method of assessing taxes, their collection, sales for non-payment, and the time and method of redemption of tax certificates and obtaining tax deeds for lands sold for non-payment of taxes. By Section 1171 in force at the time of the issuance of all bonds now outstanding tax collectors were required at tax sales where there were no bidders for a parcel of land to bid it off for the Trustees of the Internal Improvement Fund who were to hold it during the period allowed for redemption in like manner and with like effect as land sold to the State for non-payment of State and county taxes while Section 1172 required immediate payment by purchasers at tax sales. By Section 1175 the tax certificates for lands bid off to the

Trustees of the Internal Improvement Fund were issued to them, and the title to unredeemed lands vested in them at the expiration of two years from the date of each certificate. They were empowered by the Section to sell and convey such lands at the best obtainable price, not less than the amount of all drainage taxes which should have become due and payable, and it was declared that the "proceeds of the sales of said lands shall be applied by the said Trustees in the payment of drainage taxes or assessments or other obligations of said trustees". By Section 1176 the redemption moneys for tax certificates held by said Trustees were remitted to them, and if any deed issued by them should be invalid because of either of the two reasons given by the statute (namely that the land was not liable for the tax or the tax had been paid at the time of the sale by the Trustees), they were required to refund the purchaser "the amount of drainage taxes received in connection therewith with interest at 6% per annum."

Sections 1178 to 1182, inclusive, define the power of the Board to issue bonds, their denominations, rate of interest, place of payment, method of execution and certification, and conversion into registered bonds, and the rights of bondholders. By Section 1178, as amended by Chapters 8413, Acts of 1921, 9119, Acts of 1923, and 10026, Acts of 1925, Laws of Florida, above referred to in connection with Section 1164 (the tax levying section), the power to issue bonds was given and the amount to be outstanding at any time was limited with a reservation of power in the Legislature to authorize additional bonds payable from drainage taxes, each additional authorization to be accompanied by the levy and imposition of additional taxes sufficient to meet the payment of the bonds authorized and the interest thereon. The method followed with respect to each additional authorization of bonds after Chapter 6456, Acts of 1913, was to amend Section 5 of that Act or Section 1164 of the Revised Gen-

eral Statutes, its re-enactment, as amended, so as to increase the tax rates imposed. This Section 1178 made the additional bonds of equal dignity with the bonds theretofore authorized, and made them equally entitled to payment from all drainage taxes without preference to any bonds or series of bonds over any other. Section 1182, never amended, declared the legislation to be full authority for the issuance of the bonds and that the provisions of the Article (Act) should constitute an irrepealable contract between the Board and District and the holders of any bonds or the coupons thereof, and empowered any holder at law or in equity by suit, action, or mandamus to enforce and compel the performance of the duties required of any officers or persons in relation to the bonds or the collection, enforcement, and application of the taxes for the payment thereof.

Section 1184 constituted the State Treasurer custodian of all funds of the Board or District, and Section 1183 made it the duty of the State Treasurer, or his successor in office, as custodian of the funds, out of the proceeds of the taxes levied and imposed, or any other moneys of the Board or District in his possession, to apply such moneys and to pay the interest and principal of the bonds, it being declared that:

> "which moneys so far as necessary are hereby set apart and appropriated for the purpose."

The entire section reads as follows:

> "It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said Board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys and to pay the in-

terest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said Board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this Article, and the other revenue and funds of the said District, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

All the bonds now outstanding were issued prior to the Acts of 1929, 1931, and 1937 attacked by the pleadings, the last original bonds being issued pursuant to a contract for their purchase dated February 27, 1925, when Chapter 9119, Acts of 1923, was in effect, and the refunding bonds of 1925 being issued pursuant to a contract for their purchase, dated June 15, 1925, after Chapter 10026, Acts of 1925, became effective. Part of the aggregate bonds now outstanding were issued in each of the years 1920, 1921, 1922, 1923 and 1925, the last issued being the refunding bonds dated July 1, 1925. The rates and amounts of acreage taxes under the 1923 and 1925 Acts appropriated, so far as necessary, to the payment of bonds and interest were, as alleged in the pleadings, greater than the rates and amounts of acreage taxes set apart for the payment of bonds by the Acts attacked. None of the provisions of law in force when said bonds were issued authorized the payment of taxes or the redemption of tax certificates with anything but money, and none authorized the cancellation of taxes or certificates without such payment. None made the Trustees of the Internal Improvement Fund the holders of lands or tax certificates in trust for the Board of Commissioners. The State Treasurer was the only custodian of funds of the District

under such laws, and the five principal State Officers who constitute the Trustees of the Internal Improvement Fund, namely, the Governor, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida, and their successors in office, were constituted the Board of Commissioners under the original Everglades Drainage District Statute, Chapter 6456 of the Acts of 1913, and under all the aforesaid amendments of that statute made when bonds of the District were being sold.

The pertinent provisions of Chapter 13633, Laws of Florida, Acts of 1929, Vol. 1, p. 146, involved in this case are summarized as follows:

Section 1, pages 146 and 147 amended Section 1161 of the Revised General Statutes of Florida (1920), so that the Board of Commissioners of Everglades Drainage District should be composed of the Governor, the Attorney General, the Comptroller, the Commissioner of Agriculture, and the State Treasurer, and their successors in office, and five persons to be appointed by the Governor, who were required to be land-owners in the District, citizens of Florida, and bona fide residents of some county wholly or partially in the District.

Section 6, pages 149 to 151, adopted the re-zoning of the lands of the District made by Chapter 12,017, Laws of Florida, Acts of 1927, Vol. 2, p. 593, and levied taxes at reduced rates and empowered the Board to reduce the taxes in each of the zones proportionately to the extent of not more than 25% of the taxes levied by the Section, and from time to time to re-adjust such levies. It also provided that there should be deducted from the taxes as to each acre an amount equal to the tax levied against same by the Act creating Okeechobee Flood Control District, which is Chapter 13711, Laws of Florida, Acts of 1929, Vol. 1, p. 386.

Section 26, pages 159 and 160, authorized the Board for e purpose of funding, retiring, and paying obligations not idenced by bonds, to issue and sell bonds in an amount t exceeding $3,000,000.00, but the Act did not levy addinal taxes for the payment of such bonds.

Section 36, page 163, provided that all laws or parts of ws in conflict therewith were thereby repealed.

The pertinent provisions of Chapter 14717, Laws of Flor-, Acts of 1931, Vol. 1, p. 194, involved in this case, are mmarized as follows:

Section 2(a), page 202, made the governing board of the trict to consist of five landowners within the District, of whom should be citizens of the State of Florida, and idents of counties wholly or partly in the District. Sec-n 2(f) required the headquarters of the District to be a county wholly or partly within the District.

Section 5, pages 209 to 230, divided the lands of the Dis-t into eight zones for the purpose of levying and iming the taxes and special assessments levied and imed by the Act, and Section 6, page 230, provided that:

> "The taxes and special assessments in this Act levied and authorized to be levied shall be used solely and exclusively for the several uses, purposes, and objects specified in the statute with respect to the several such taxes and special assessments."

ections 7 and 8 levied acreage taxes upon certain lands he District at the rates fixed in the statute, part of the eage taxes levied being designated a "Debt Service Tax" n the proceeds of which all obligations of the District e to be paid including obligations other than bonds, and t being designated together with other taxes as "Adistration Tax" for the payment of general administra- expenses of the District.

Section 7, pages 231 and 232, provided:

> "That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax': * * *"

The Section then levied on the several zones annually taxes ranging from 49¢ per acre in zone 1, to 1¾¢ per acre in zone 8, as the Debt Service Tax for all outstanding obligations of the District, and not merely bond obligations. (Note: The annual tax under Chapter 9119, Acts of 1923, ranged from maximum annual tax of 92¢ per acre to 10¢ per acre, and the annual tax under Chapter 10026, Acts of 1925, ranged from a maximum of $1.50 per acre or $1.50 per town lot for zone 1, to a minimum of 80¢ per acre or per town lot for zone 5. The Act of 1923 was in force when the last outstanding original bonds were issued, and the Act of 1925 was in force when the outstanding refunding bonds were issued.)

Section 8, pages 232 and 233, provided:

> "That for the purpose of paying cost of administering the affairs of the said District generally, there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows: * * *"

It then levied on the several zones annually taxes ranging from a maximum of 21¢ per acre for zone 1 to ¾¢ per acre for zone 8. The Section also levied an annual ad valorem tax of one mill per dollar of valuation upon all real and personal property in the District, and denominated the taxes levied and imposed by the Section as the administration tax.

Section 9, pages 234 to 236, authorized the division by the Board of the lands of the District into maintenance areas, the adoption of an annual maintenance budget, and by paragraph (e) authorized the Board to levy each year a maintenance tax on each area of not exceeding 50¢ per acre, which it was provided "shall be used only for the purpose of maintaining and operating those works, the maintenance and operation of which are shown by the budget to be beneficial to such maintenance area."

Section 43, pages 256 and 257, established for the District the following funds:

(1) Administration Fund into which it was declared should be paid the proceeds of the administration tax levied by the Act.

(2) Debt Service Fund into which it was declared should be paid the proceeds of the debt service tax levied by the Act, the proceeds of the conversion into money of all the tax sale certificates and/or lands which should be received by the Board of Commissioners from the Trustees of the Internal Improvement Fund under the provisions of the Act, and all moneys which should be received by the Board after November 1, 1931, from redemptions and/or sale of lands sold for the non-payment of taxes for the year 1930.

(3) Maintenance Fund into which it was declared should be paid the proceeds of the maintenance tax levied under the Act for the purpose of maintaining and preserving the works theretofore constructed by the District.

The last mentioned Section also empowered the Board to borrow for the account of the administration fund and for the account of the maintenance tax fund, severally, and to pledge the administration tax for the payment of loans for account of the administration fund, and the maintenance

tax for the payment of loans for the account of the maintenance fund.

Section 44, page 257, confined the use of the administration fund to administration expenses, the debt service fund to the payment of the principal and interest of all bonds and obligations then owing by the District, and to bonds and notes or refunding bonds which should be issued for the purpose of funding or refunding any existing obligations, and the maintenance fund to the maintenance work.

Section 48, page 259, provided for annual assessment rolls with the several taxes in separate columns.

Section 50, page 261, and Section 52, page 262, provided for transmission of assessment rolls to tax assessors and defined their duties.

Section 56(c), page 265, provided the method of tax sales by collectors and that where there were no bidders for a tract, the tax collector should bid it off for the Board of Commissioners, (Note: The legislation in force when outstanding bonds were issued required any such tract to be bid off for the Trustees of the Internal Improvement Fund) and Section 59, page 267, made the report of sales, without the issuance of any certificate, conclusive evidence of the sale to the Board and of its lien. Section 60, pages 268 and 269, gave two years for redemption from tax sales, and required the redemption money for lands bid off for the Board to be remitted to the Treasurer of the District, while Section 61, page 269, authorized the sale of the lien of the Board for lands bid off to it, the proceeds to be remitted to the Treasurer of the District. By Section 63, page 272, it was provided that title to lands bid off to the Board for non-payment of taxes and not redeemed within two years from date of sale should vest in the Board.

By Section 65(a), page 273, it was declared that all tax sale certificates for Everglades taxes, whether evidencing

a lien or title to the lands held by the Trustees of the Internal Improvement Fund were held in trust for the Board of Commissioners, and that the beneficial interest and title was vested in such Board, subject to the right of the Trustees to be repaid by the District any sums of money advanced by the Trustees for the account of the District. Paragraph (b) of the Section provided that within 90 days after the Act became effective, or as soon thereafter as practicable, said Trustees should assign, transfer, and deliver to the Board all such tax sale certificates, and that all the title of said Trustees under such certificates should vest in the Board; that any indebtedness of the District to the Trustees should be adjusted at the time of the transfer in such manner as should be agreed on, and might be paid in whole or in part by the Board relinquishing its right in certain certificates to be agreed on; that any balance owing to the Trustees after credit for any certificates retained by them should be evidenced by certificates of indebtedness of the Board to the Trustees in denominations of not less than $1,000.00, and that such certificates should be receivable in payment of District taxes on lands then or thereafter held by the Trustees, and the Board should not be required to pay the certificates in any other manner than by receiving them in payment of taxes by the Trustees, or by any purchaser of the lands from the Trustees. Paragraph (e) of the Section, page 275, as to certificates retained by the Trustees and not redeemed, vested fee simple title to the lands in the Trustees and made them part of the Internal Improvement Fund of the State of Florida.

By Section 67(a), page 277, it was provided that any lands covered by tax sale certificates transferred to the Board of Commissioners by the Trustees of the Internal Improvement Fund might be sold at the best obtainable price, and that the Board might accept payment of all or

part of the price in bonds or matured interest coupo
the District at par.

By Section 67(b), (c), and (d), page 277, it was pro
that any lands as to which the Board might acquire
by virtue of tax sales thereafter made, might be sold
the best price obtainable, but not less than unpaid t
interest, penalties, and costs and charges; that all
should be for cash or upon terms, but deeds should be
only upon payment of the price; that the Board should
sell more than 80 acres in a contiguous body without n
of intention to sell by publication, and any sale pursu
to publication should be for the best bid, subject to
limitations of the Act as to the amount for which the Bo
might sell.

Section 70(a), page 281, provided the Board by res
tion might authorize the issuance of bonds for the purp
of refunding bonds, notes, certificates of indebtedness
other obligations then outstanding for the payment
which the credit of the District was pledged, but did
levy any additional taxes for paying such bonds a
interest.

Section 71, page 284, provided that in the redemption
tax sale certificates transferred to the Board under the A
and in the redemption of lands sold to the Board for n
payment of taxes for 1930, the person redeeming shou
have the right to pay in bonds and matured interest co
pons at par in lieu of cash.

Section 104, page 305, provided that all laws or parts
laws in conflict therewith were thereby repealed.

The pertinent provisions of Chapter 17902, Laws of Flo
ida, Acts of 1937, Vol. 1, page 370, involved in this case ar
summarized as follows:

This Act is amendatory of Chapter 14717, Laws of Flo
ida, Acts of 1931, as amended, which the title of the 193
Act states was a "Revision of All Laws Relating to Ever

glades Drainage District", and changes the zones of the District and levies taxes upon the lands according to the changed zones, provides for the collection of the taxes, for the cancellation of certain taxes and tax levies, and cancellation of assessments against lands afterward acquired by the Federal Government for park and recreational purposes and exempts such lands from future taxes.

Section 1, page 371, amending Section 2(a) of the 1931 Act, made the governing board of the District to consist of five persons to be appointed by the Governor possessing the qualifications therein defined.

Said Section 1, page 372, amending Section 2(h) of the 1931 Act required the Board of Commissioners to appoint a suitable person as Treasurer of the District, and made him custodian of the moneys and securities of the District. Paragraph (i) of said Section, page 373, required the Board to employ a Secretary and provided that the same person might be Secretary and Treasurer; that the salary of the Secretary should not exceed $200.00 per month, but that the Board might allow him additional compensation as Treasurer in the event of his appointment to both offices.

Section 2, page 374, amended Section 5 of the 1931 Act, so as to divide the lands of the District into five zones, instead of eight zones, for the purpose of the Act and the levying of taxes.

Section 3, page 391, amended Section 7 of the 1931 Act to provide:

> "That for the purpose of enabling the Board to pay the principal and interest of all obligations of Everglades Drainage District heretofore incurred and now outstanding and any refunding bonds hereafter issued, there are hereby levied and imposed within Everglades Drainage District the following special taxes or assessments, which shall be known and designated as the 'Debt Service Tax': * * *",

and then levied for the year 1937 and each year thereafter 90¢ per acre on lands in Zone One, 55¢ per acre in Zone Two; 30¢ per acre in Zone Three; 10¢ per acre in Zone Four; and 3¢ per acre in Zone Five; and also on platted town lots of one-fourth of an acre or less in Zones One, Two, Three and Four 20¢ per lot, and upon such lots in Zone Five 3¢ per acre, which in effect very substantially reduced the rates and amounts of acreage taxes levied by prior statutes for the payment of the bonds of the District. (See note under summary of Section 7 of the 1931 Act, ante.)

Section 4, page 392, amended Section 8 of the 1931 Act to provide:

> "That for the purpose of paying the cost of administrating the affairs of the said District generally, there is hereby levied and imposed upon lands within Everglades Drainage District a special tax or assessment as follows: * * *".

For the year 1937 and each year thereafter it levied upon lands in Zone One 10¢ per acre; in Zone Two 5¢ per acre; in Zone Three 3¢ per acre; and in Zone Four 2¢ per acre. The Section also levied an annual *ad valorem* tax of one mill per dollar of valuation upon all real and personal property in the District, and declared the taxes levied should be known as the administration tax.

Section 5, page 393, amended Section 52 of the Act of 1931 in respect of the duty of tax assessors as to tax lists and rates under the Act.

Sections 6 and 7, page 394, amended Sections 53 and 54 of the 1931 Act as to the duties of tax collectors.

Section 9, page 395, provided:

> "In connection with the effectuation and consummation of any compromise, refinancing or refunding of the indebtedness of said Everglades Drainage District, the Board of Commissioners is hereby authorized and em-

powered to compromise, adjust, or cancel, without payment, any and all Everglades Drainage District taxes and liens now outstanding against the lands within said District levied by the laws of the State of Florida for the year 1936 and prior years, and held and owned by the Board of Commissioners of Everglades Drainage District, by proper resolution of said Board setting forth the manner and terms upon which said compromise, adjustment, or cancellation has been or will be made, and providing for the means and manner of clearing the records as to such liens under the provisions of this Act.

"The Board of Commissioners and the Trustees of the Internal Improvement Fund of Florida are hereby given authority to enter into such agreements and make such settlements between them as, in the discretion of said two Boards, may seem just and expedient in the consummation of any such debt refunding or adjustment plans negotiated by said Board of Commissioners."

Section 10, page 395, provides:

"That in the event any of the lands described in the above zones shall be or become the property of the United States Government, or under the control, management, and maintenance of the United States Government, the Board of Commissioners is hereby authorized and empowered by resolution of the Board to cancel any and all liens and assessments against such property and to exempt said lands from future Everglades Drainage District taxes and assessments, so long as said lands may remain the property or under the control of the United States Government."

Section 11, page 396, provides:

"That the Board of Commissioners shall have the power and authority, from time to time, to provide by resolution that the time within which tax sale certifi-

cates or other tax liens representing taxes levied for the year 1936, or any prior year, held by such Board, may be redeemed, shall be extended for a total period not to exceed two years from the date that this Act becomes a law, and such redemption may be made within the period of time fixed by such Board by the payment of the principal amount of taxes evidenced by any such tax sale certificate or secured by any such tax lien plus interest thereon, at the rate of eight per centum (8%) per annum, from the date upon which such tax sale certificate was issued or such tax lien became evidenced."

Section 12, page 396, provides:

"That in the payment or redemption of any tax sale certificate or tax lien representing taxes levied for the year 1936, or any prior years, held by the Board, bonds and/or matured interest coupons or other obligations of such drainage district shall be receivable at par, and in lieu of money in payment of the sum of money required to be paid in effecting such redemption, except that so much or any part of such sum of money required to be paid as is applicable under the law primarily or solely to maintenance of the works and improvements of the district or to the administration of its affairs shall be payable solely in cash. The fees of public officers chargeable by law in connection with any such redemption shall be paid in cash."

Section 17, page 397, provided that all laws or parts of laws in conflict therewith are thereby repealed.

(d) Nature of the Case and Rulings of the Court Upon which it is Relied to Bring the Case Within the Foregoing Jurisdictional Provisions, Including a Statement of the Grounds Upon Which it is Contended that the Questions Involved are Substantial.

The original bill in equity was filed May 19, 1931, for the purpose of enjoining certain defendants, including officers of the State of Florida, namely, certain of the members of

the Board of Commissioners of Everglades Drainage District, from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1929, being Chapter 13633 of the Laws of Florida of 1929; the first supplemental bill was filed July 4, 1931, for the purpose of enjoining among others, the said officers, and the Trustees of the Internal Improvement Fund of the State of Florida, from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1931, being Chapter 14717 of the Laws of Florida of 1931, and the second supplemental bill was filed on July 16, 1937, for the purpose of enjoining said state officers from acting in the enforcement and execution of a statute of the State of Florida enacted in the year 1937, being Chapter 17902 of the Laws of Florida of 1937. At all the times herein mentioned, all plaintiffs were citizens and residents of States other than the State of Florida, the State of residence of all of the defendants named in the foregoing bills.

The bill and supplemental bills allege a bond contract between the Board of Commissioners of the Everglades Drainage District, the Trustees of the Internal Improvement Fund and the holders of the outstanding bonds of the District amounting to approximately $10,000,000.00, including plaintiffs as such holders, and that the subsequently enacted statutes of the State of Florida of 1929, 1931, and 1937, heretofore mentioned, impair the obligation of the bond contract in violation of Article I, Section 10, of the United States Constitution. The Trustees of the Internal Improvement Fund of the State of Florida since their creation by statute in 1855, Chapter 610 of the Laws of Florida of 1855, consisted and still consists of five of the principal State officers of the State of Florida, including the Governor of the State, the Comptroller, the State Treasurer, the Attorney General, and the Commissioner of Agriculture of the State of Florida. The members of the Board of Commissioners of the

Everglades Drainage District, when the District was formed in 1913, consisted of the same five State officers as constituted the Trustees of the Internal Improvement Fund, and pursuant to the statutes in force at all the times during which bonds of the District were being issued and sold; by the statute of 1929 the members of the Board of Commissioners were increased to ten, of whom five were State officers and five were individuals resident in the district, and by the statute of 1931 the number was reduced to five, none of whom were State officers. The primary purpose of the bill and supplemental bills was to enjoin the Board of Commissioners and Trustees of the Internal Improvement Fund from enforcing the statutes of Florida of 1929, 1931, and 1937, above referred to.

Two of the principal questions involved in the litigation are (1) whether the Acts of 1929, 1931, and 1937, impair the obligation of the bond contract between the Board of Commissioners of Everglades Drainage District and the holders of outstanding bonds of the District, including plaintiffs as such holders, by substantially reducing the amount of taxes levied by the prior statutes under which bonds of the District were authorized to be issued and were issued from time to time, and (2) whether said Acts of 1929, 1931, and 1937, impair the obligation of said bond contract by providing that lands in said District offered at tax sale for default in payment of the taxes to which they were made subject, by the statutes pursuant to which the bonds of the District now outstanding were authorized to be issued and were issued, should be bid off for the Board of Commissioners of the District instead of for the Trustees of the Internal Improvement Fund as provided in the statutes under which the bonds were authorized to be issued and were issued, in the event that at said tax sales the said lands so offered for sale were not bid in for cash in an amount equal to defaulted taxes, costs, etc. Notwithstanding the

Trustees of the Internal Improvement Fund had actually paid the taxes upon the lands bid off for them for a number of years during which bonds were being sold and after the bonds of the District had been issued and sold, the said Trustees, after the enactment of the statutes of 1929, 1931, and 1937, refused to pay such taxes and asserted that they were not under the law required to pay them. The Board of Commissioners of the District, by the terms of the statutes which are part of the bond contract, constitute a corporate entity, but the Trustees of the Internal Improvement Fund are ex officio Trustees and do not constitute a corporate entity.

The Everglades Drainage District was established by a statute of the State of Florida, as a tax District, in 1913, for the purpose of reclaiming and improving the land in the District, consisting of approximately 4,000,000 acres of land in southern Florida contiguous to Lake Okeechobee, the principal part of which consists of swamp and overflowed lands granted by the United States to the State of Florida in 1850, subject to an obligation of the State of Florida to the United States under the granting statute to reclaim the same as therein provided (Act of Congress of September 28, 1850, United States Statutes at Large, Vol. 9, page 519). By statute enacted in 1855, Chapter 610 of the Laws of Florida of 1855, the State of Florida vested in the Trustees of the Internal Improvement Fund the title to said swamp and overflowed lands so granted to the State by the United States with provisions in said statute as to the powers and duties of said Trustees in respect of said lands. For the purpose of insuring the proper performance of the duties of the said Trustees, the statute created as Trustees five principal State officers as the same should be constituted from time to time.

Up to about 1905 the Trustees of the Internal Improvement Fund, holding the title to the said lands as fiduciaries

for the State of Florida, were directly in charge of the reclamation and management thereof, and in the performance of their duties sold some of the lands, made gifts of some to railroad companies and others, and retained much of such lands which the Trustees improved in accordance with their ideas and the funds available to them for that purpose. After this long period of trustee management, the policy was adopted by the State in 1913 of forming a District (Everglades Drainage District) for the purpose of improving said lands, one of the primary purposes of which was to sell bonds of the district to the public, the proceeds thereof to be used in reclaiming and improving the lands in the district more expeditiously than the Trustees were able to do solely out of their own funds. In the effort to make such bonds salable to the public, the statutes of the State of Florida, as amended, pursuant to which the bonds of the District were authorized to be issued and were issued, divided the lands of the District into zones, and levied graduated acreage taxes upon such lands, appropriated and pledged the proceeds of the taxes for the payment of the bonds, and provided that in the event the taxes on the lands were not paid, the particular lands on which the taxes were unpaid should be offered for sale by the tax collector of the county in which such lands were located and if they were not purchased at such sale for the amount of the defaulted taxes, costs, etc., they should be bid off for the Trustees who, as plaintiffs contend, must thereafter pay the taxes on the bid off lands; and in fact for a period of years the Trustees did pay such taxes. The provision for bidding off the lands for the Trustees was a substitute for a provision in the earlier statutes, that such lands should be bid off for the Board of Commissioners of the District. The lands so bid off for the Trustees of the Internal Improvement Fund were bid off for them as the Trustees created under the statute of 1855, and not in some

other capacity undefined in the statute providing for such disposition. On the former application by plaintiffs for interlocutory injunction, heard herein in 1932, the United States District Court, in its decision interpreting the statutes of 1929 and 1931 (57 F. (2d) 1048) determined, one judge dissenting, that the lands were bid off for the Trustees in their capacity as Trustees under the statute creating the Trustees and defining their powers and duties, and that the Trustees did not, as contended by the Board of Commissioners of the District and by the Trustees, hold the lands so bid off in trust for the Board of Commissioners of the Everglades Drainage District. After such decision by the District Court herein, the Board of Commissioners and the Trustees filed their answers in which both alleged that the Trustees held the bid-off lands, not in their capacity as Trustees under the statute which created them, but in a new and different capacity as Trustees for the Board of Commissioners of the District. After such answers had been filed the Board of Commissioners instituted a mandamus proceeding in the Supreme Court of Florida, by a petition, in which they alleged, contrary to the position which they had taken in the answer herein, that the said Trustees, the sole respondents in said mandamus proceeding, were under an obligation in respect of bid-off lands not solely confined to that of trustees for the Board of Commissioners or for the District. Throughout the present proceeding the Board of Commissioners and the Trustees have uniformly contended by pleadings, motions and otherwise that the sole status of the Trustees as to bid-off lands is as trustees for the Board of Commissioners or for the District. The District Court herein, on the motion of defendants to dismiss the bill and supplemental bills, has granted said motion, has adopted the construction made of said statutes in respect of the status in which the Trustees of the Internal Improvement Fund hold

bid-off lands, which was set forth in the dissenting opinion on the former motion herein for interlocutory injunction (57 F. (2d) 1048), and has adopted the opinion of the Florida Supreme Court in the mandamus proceeding instituted by the Board of Commissioners as relators and the Trustees of the Internal Improvement Fund as sole respondents as hereinbefore set forth. In its opinion the District Court erroneously states in substance that under the doctrine of *Erie R. R. Co.* v. *Tompkins,* 82 L. Ed. 787, it is required in substance to reverse its former decision and to adopt the interpretation made by the State court in said mandamus proceeding.

To induce Spitzer, Rorick & Company, an investment house, to enter into a contract with the Board of Commissioners of the District to purchase bonds of the District to be issued under the Act of 1923 as amended, the Trustees of the Internal Improvement Fund, because of their ownership of approximately 1,000,000 acres of land in said District, and their interest in the development of such land, agreed with Spitzer, Rorick & Company and the holders of bonds issued and to be issued under said Act of 1923 as amended, to pay to the Board of Commissioners of the District promptly for tax sale certificates representing lands bid off at tax sales by the tax collectors for the Trustees of the Internal Improvement Fund, such payment to be made in the same manner as an individual would pay who had bid in the said lands at tax sales. The Trustees set forth their said agreement in the minutes of their meeting held on June 16, 1925, and said minutes are included in the bill of complaint herein (par. 9). The said agreement of the Trustees is part of the bond contract which is impaired by the Acts of 1931 and 1937, especially by the provision in the former of said acts, that the said lands so bid off for the Trustees shall be conveyed by the Trustees to the Board of Commissioners, and that the Board of Com-

missioners shall issue Certificates of Indebtedness to said Trustees for the purpose of repaying the Trustees for the amounts so paid by the Trustees to the Board of Commissioners in respect of the lands so bid off for the Trustees at the tax sales.

The Trustees of the Internal Improvement Fund are essential parties defendant herein, who act as such Trustees solely as officers of the State of Florida and for the benefit of the State of Florida. In the Act of 1931 of the State of Florida, hereinbefore referred to, Chapter 14717 of the Laws of Florida of 1931, provision is made (Sec. 65 thereof) that the Board of Commissioners of Everglades Drainage District, for the purpose of repaying to the Trustees any sums of money which may have been advanced by the Trustees for the account of the District and which shall be found to be owing by the District to the Trustees, by adjustment to be made in such manner as may be agreed upon between the Trustees and the Board of Commissioners of the District, should make and issue to the said Trustees certificates of indebtedness of said Board in amounts equal to any balance remaining due to the Trustees upon such adjustment, which certificates might be used by the Trustees in payment of Everglades Drainage District taxes on lands held by them. In the same section of the Act of 1931 provision is further made that the Trustees should transfer and convey to the Board of Commissioners of the District all of the tax sale certificates made out to said Trustees by the tax collectors, representing lands bid off by said tax collectors for the Trustees. The said Act of 1931 was enacted by the legislature of the State of Florida upon the application of the Board of Commissioners of said District. In the first supplemental bill of complaint herein appropriate allegations are made concerning the foregoing provisions of the 1931 Act (pars. 4(6) and 4(7)) and in the prayers thereof as amended, relief based upon such allega-

tions is asked, substantially (prayers 4, 8) among other things, that the court enjoin the Trustees from transferring to the Board of Commissioners of the District any tax sale certificates representing lands or conveying lands, bid off for the Trustees by the tax collectors and if any such transfer has been made, that the court require the Board to retransfer said certificates to the Trustees, and to reconvey such lands; that the court enjoin the Trustees from receiving any certificates of indebtedness, from negotiating them or from issuing them in payment of Everglades Drainage District taxes on lands held by them; that the court enjoin the Trustees from disposing of any of their property unless in accordance with the statutes forming part of the bondholders' contract, and direct said Trustees to pay to the State Treasurer of Florida, as custodian of the funds of the Board of Commissioners, all amounts due from them for tax sale certificates on lands bid off for them and the subsequent taxes on said lands.

In the aforesaid Act of 1937, Chapter 17902 of the Laws of Florida of 1937, provision is made (Sec. 9 thereof) that the Board of Commissioners of Everglades Drainage District and the Trustees are given authority to enter into such agreements and settlements between them as may seem expedient in the consummation of debt refunding or adjustment plans negotiated by the Board of Commissioners in respect of the indebtedness of the District, including the bonded indebtedness, without the consent or approval of the holders of the outstanding bonds. In the second supplemental bill (par. 8) appropriate allegations are made concerning the foregoing provisions of the 1937 Act, and in the prayers thereof (prayer 7) relief, based on such allegations, is asked, substantially, among other things, that the Trustees be enjoined from entering into such agreement or settlement with the Board of Commissioners.

In the statute of Florida, being Chapter 6456 of the Laws of Florida of 1913, as amended from time to time, including the amendments made in 1925, being Chapters 10026 and 10027, Laws of Florida, Acts of 1925, Vol. 1, pp. 14, *et seq.* and pp. 41, *et seq.*, under which the bonds of the District were authorized to be issued and were issued, it is provided that the State Treasurer of the State of Florida shall be custodian of all of the funds of the Board of Commissioners and of the Everglades Drainage District, and that such funds shall be disbursed only upon the order of the Comptroller of the State of Florida, signed by the Governor of the State of Florida. In said Act it is also provided that it shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to said Board of Commissioners of said District, out of the proceeds of the taxes levied and imposed by the statute under which the bonds were authorized to be issued and were issued, which moneys so far as necessary are thereby set apart and appropriated for the purpose, to apply said moneys to the payment of the principal and interest of the bonds of the District as the same become due. A similar provision was made in respect of the creation of a sinking fund for the payment of the bonds. In the Act of 1931, Chapter 14717 of the Laws of Florida of 1931, the rates and amounts of acreage taxes levied on lands within the District were substantially reduced and the proceeds of the taxes levied and imposed by the statute as hereinbefore set forth, and appropriated and pledged for the payment of the bonds of the District, were divided into several funds, namely, the debt service fund, the administration fund and other funds, and only part of the proceeds of said taxes were, under the provisions of the said 1931 Act, required to be applied by the State Treasurer to the payment of the principal and interest of the bonds of the District. In the first supple-

mental bill, appropriate allegations are made in respect of the foregoing matters (par 4(2)) and relief, based on such allegations, is asked, among other things, in substance, that the Treasurer of the State of Florida, as custodian of the Funds of the District be enjoined from disbursing or applying any such funds in his possession or which he might thereafter receive, except to the payment of the principal and interest of the bonds and to the payment of the sinking fund provided for the payment of the bonds by the statutes pursuant to which the bonds were authorized to be issued and were issued.

Prior to the enactment of the 1929 Act, Chapter 13633 of the Laws of Florida of 1929, the Board of Commissioners of Everglades Drainage District was composed of the five principal State officers heretofore mentioned, pursuant to the statutes in force when the bonds of the District were authorized to be issued and were issued, namely, the Governor, Comptroller, State Treasurer, Attorney General, the Commissioner of Agriculture of the State of Florida. By the aforesaid Act of 1929 the members of the Board of Commissioners were increased to ten, composed of said five principal State officers and of five individuals, and this was the status of the membership of the Board of Commissioners at the time the original bill of complaint herein was filed (par. 2 thereof). The Act of 1931, Chapter 14717 of the Laws of Florida of 1931, purported to reduce the number of members of the Board of Commissioners to five, composed entirely of private individuals, and to continue the State Treasurer as Treasurer of the District. In the supplemental bill of complaint appropriate allegations are contained, and complaint is made (par. 4(1)) of the foregoing change in the 1931 statute eliminating the five principal State officers as members of the Board, and the plaintiffs pray (par. 9 as amended) that the court determine that

the Act of 1931, which among other things eliminated said five principal State officers from the Board, impaired the obligation of the bond contract.

In the second supplemental bill, complaint is made (par. 4 (1)) of the provisions of the 1937 Florida statute, Chapter 17902 of the Laws of Florida of 1937, authorizing the Board of Commissioners to appoint a suitable person as Treasurer (in place of the State Treasurer) and renewing the prayers made in the bill and supplemental bill, the plaintiffs further pray, among other things (prayer 11), substantially that the court determine that it is part of the bond contract that the aforementioned five principal state officers, including the State Treasurer, are members of the Board of Commissioners of Everglades Drainage District and subject to the duties placed upon said officers in respect of the levy, imposition, collection and payment over of the proceeds of acreage taxes set apart, appropriated and pledged for the payment of the bonds of the District. On this theory the proper members of the Board of Commissioners were the five principal State officers heretofore mentioned. In the bill it is prayed (par. 4) that the Board of Commissioners be enjoined from enforcing the said Act of 1929 in the respects set forth in the prayer, including the very substantial matter of the entering of the acreage taxes on the tax rolls at the rates set forth in the Act of 1929 which were lower than contained in the prior statutes which authorized the issue of the bonds and under which the bonds were issued, and which appropriated and set aside the proceeds of the taxes in the hands of a separate custodian for the payment of the principal and interest of the bonds, and directed the custodian to pay such principal and interest out of said funds in accordance with the provisions of the statute; this prayer was renewed in the supplemental bill, in respect of the provisions of the aforesaid Act of 1931,

and in prayer 3 of the second supplemental bill, directed to the provisions of the Act of 1937.

In 1928 and 1929 before the passage of the Act of 1929, Chapter 13633 of the Laws of Florida of 1929, the five principal State officers then composing the Board of Commissioners of the District and also constituting the Trustees of the Internal Improvement Fund, who for many years and during all the time bonds of the District were being issued, had their offices together, and so far as they kept any records of their affairs kept common records, and for many purposes acted as one body, determined that they would no longer perform the bond contract between the District and the holders of its outstanding bonds, and that they would endeavor to secure the passage of legislation to accomplish their purpose; the said five State officers in the capacity of Board of Commissioners of Everglades Drainage District, then made application to the legislature to enact the Act of 1929 substantially in the form in which it was enacted, and the said five State officers as part of the said Board of Commissioners under the Act of 1929 made application to the legislature to enact the 1931 Act, substantially in the form in which it was in fact enacted. These five State officers, acting as Trustees of the Internal Improvement Fund, and the owners as such Trustees of a substantial part of all the lands in the District which they had owned long before the establishment of the District in 1913, and still owned, refused further to pay taxes on such lands in pursuance of the policy which they as members of the Board of Commissioners and as Trustees of the Internal Improvement Fund had adopted in applying to the legislature for the passage of the Acts of 1929 and 1931. Thereafter the District Court of the United States herein determined (57 F. (2d) 1048) that the Acts of 1929 and 1931 were unconstitutional in certain respects in that they impaired the obligation of the bond contract, and held that the rates of acreage taxes pro-

vided in the Act of 1923 were part of the bond contract and could not be reduced by subsequent legislation to the point where they were not sufficient to pay the principal and interest of the bonds as they matured and to pay the amount required for a sinking fund for the payment of the bonds as required by the statutes pursuant to which the bonds were authorized to be issued and were issued. The Supreme Court of the State of Florida in a mandamus proceeding (*State ex rel. Sherrill and Vann v. Millam*, 113 Fla. 491) reached a similar conclusion with the exception in substance that the State court held that the Act of 1925, Chapter 10026 of the Laws of Florida of 1925, and not the Act of 1923, Chapter 9119 of the Laws of Florida of 1923, constituted part of the bond contract. Notwithstanding such holding both by the District Court herein and the Florida Supreme Court, the Board of Commissioners of the District thereafter made application to the legislature to enact the Act of 1937 in substantially the same form in which it was enacted. The members of the Board of Commissioners of the District have therefore made continuous attempts to impair the obligation of the bond contract even in the face of the determinations of the courts, both State and Federal, that prior similar attempts by the enactment of legislation were invalid.

(e) Matters in Which it is Claimed the Court Abused Its Discretion in Denying Interlocutory Injunction.

The refusal of the court to grant the application for interlocutory injunctional decree was an abuse of its discretion in that the obligation of the contract of bondholders would be impaired in numerous respects by the enforcement of the statute of 1931 or the statute of 1937, and particularly the enforcement of the latter by the entry on the tax rolls of the rates of taxes levied therein, by the action of de-

fendants, since the rates of taxes levied in the 1931 statute and in the 1937 statute are substantially less than those levied either in the Act of 1923 or the Act of 1925, under which the bonds were authorized to be issued and were issued, and under which the proceeds of the taxes were pledged for the payment of the bonds; the entry of the taxes at the rates provided in either the 1931 statute or the 1937 statute would cause irreparable injury to the plaintiffs, in that such entry would impair the security pledged for the payment of the bonds, by creating confusion in respect of the collection of the proper amount of taxes and rendering it difficult if not impossible to have the proper amount of taxes collected for the years in which an improper amount was entered on the tax rolls; the entry of the taxes on the tax rolls was imminent and threatened; and for the foregoing reasons the denial of the application for interlocutory injunction, and the refusal of the court to grant the application to reinstate the interlocutory injunction theretofore granted was an abuse of the discretion of the court.

(f) Cases Sustaining the Jurisdiction.

Stratton v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10;
Sterling v. *Constantin*, 287 U. S. 378;
Spielman Motor Sales Co. v. *Dodge*, 295 U. S. 89;
Interstate Busses Corp. v. *Blodgett*, 276 U. S. 245;
Suncrest Lumber Co. v. *North Carolina Public Park Commission*, 29 F. (2d) 823 (C. C. A., 4th Circ.);
Polk Co. et al. v. *Glover, County Solicitor, et al.*, decided U. S. Sup. Ct. Nov. 7, 1938.

Appended hereto as a part hereof are:

(a) Copy of the opinion of the three judge court of April 13, 1932; and

(b) Copy of the opinion and judgment of the three judge court of August 2, 1938 denying relief and dismissing the bill and supplemental bills.

Respectfully submitted,

WILLIAM ROBERTS,
WATSON & PASCO & BROWN,
W. H. WATSON,
SAMUEL PASCO,
Solicitors for Plaintiffs, Appellants.

EXHIBIT "A".

DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA.

ROBICK, *et al.*,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT *et al.*

Opinion of April 13, 1932.

Before Bryan, Circuit Judge, and Sheppard and Strum, District Judges.

STRUM, *District Judge:*

This is a suit in equity in which bondholders of Everglades Drainage District seek injunctive relief against the Board of Commissioners of said District, the Trustees of the Internal Improvement Fund of Florida, and other officers, to restrain the effectuation by those officers of parts of Chapter 13633, Laws of Florida, Acts of 1929, and parts of Chapter 14717, Acts of 1931, which plaintiffs assail as impairing the obligation of their bond contracts, contrary to the United States Constitution, Article 1, par. 10, and as denying them due process and equal protection contrary to the Fourteenth Amendment.

Pursuant to the Act of Congress of September 4, 1841, par. 8 (43 U. S. C. A. par. 857), Florida received 500,000 acres of land for internal improvements upon her admission to the Union, March 3, 1845. Pursuant to the Swamp Lands Act of September 28, 1850, par. 1-4 (43 U. S. C. A. par. 982-984), Florida has received patents to more than 20,000,000 acres of swamp and overflowed lands. Grants to the state under the latter Act were subject to the proviso that such lands and their proceeds should be exclusively applied by the state as far as necessary to the reclamation thereof by means of levees and drains.

By Chapter 610, Laws of Florida, approved June 6, 1855, he unsold portions of the internal improvement lands above entioned, and the swamp and overflowed lands patented nder the Act of 1850, together with the proceeds of prior ales thereof, were constituted a separate fund known as the nternal Improvement Fund. The Governor and four other tate officers were thereby constituted, and are still, ex fficio statutory trustees of the fund, in whom title to those nds is vested until sold or conveyed under legislative uthority.

By Chapter 610, Acts of 1855, these Trustees are charged ith the duty, pursuant to the proviso of the Congressional ct of 1850, to make such arrangements for the drainage of he lands as is most advantageous to the fund and the set- ement and cultivation of the lands. They have authority o sell and convey the lands, and it is their duty to apply the roceeds to the purposes of the fund as may be provided by w. Chapter 610, supra, is still in force. See Section 1384, seq., and Sections 1401, 1408, Comp. Gen. Laws, Fla., 927; Trustees Internal Improvement Fund v. Root, 63 Fla. 56, 58 So. 371; Trustees of Internal Improvement Fund v. ott, 59 Fla. 648, 51 So. 535.

Pursuant to the Swamp Lands Act of 1850, supra, one atent known as Everglades patent No. 137 (Hardee v. lorton, 90 Fla. 452, 108 So. 189, 191) was issued to the tate of Florida, granting unsurveyed swamp lands of an stimated area of nearly 3,000,000 acres, which lands be- ame a part of the Internal Improvement Fund under Chap- r 610, supra, and subject to the statutory uses and pur- oses of that fund. These lands lie in an integrated area n or contiguous to the shores of Lake Okeechobee, reclama- on of which lands presented unusual problems peculiar to he locality.

Reclamation by drainage of these and adjacent lands, ome held by the Trustees of the Internal Improvement und under Chapter 610, supra, and some vested in private wnership, was undertaken, pursuant to legislative enact- ent, as a separate enterprise by establishing the Ever- lades Drainage District, so that the limited funds available o the Trustees of the Internal Improvement Fund from the

sale of the public lands in the Everglades area could be augmented by special assessments upon all lands in the District which were benefited by the drainage improvements (except school lands, see Southern Drainage Dist. v. State, 93 Fla. 672, 112 So. 561), and all revenue anticipated by the issuance of bonds, thus enabling the reclamation work to promptly progress on a scale appropriate to the magnitude of the undertaking.

Following litigation as to earlier legislation, the present Everglades Drainage District was established by Chapter 6456, Acts of 1913 (Section 1530, et seq., Comp. Gen. Laws, Fla., 1927), comprising an area of approximately four million acres. Of these approximately one-fifth are now owned by the Trustees of the Internal Improvement Fund; the remainder being privately owned (except school lands). The boundaries of the District have been altered and much additional legislation enacted, but the Act of 1913 is the genesis of the present District. See Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449, where a comprehensive legislative history of the District to 1927 will be found, prepared for the Supreme Court of Florida by Mr. Justice Whitfield.

Governmental affairs of the District are distinct from the general governmental affairs of the Internal Improvement Fund, as well as from those of the State and the several counties, although management of the affairs of the District was originally imposed, as additional administrative duties, upon the same state officers who were Trustees of the Internal Improvement Fund. Those officers until recently composed the Board of Commissioners of Everglades Drainage District. By Chapter 13633, Acts of 1929, five civilian landowners in the District were added to the Board, and, by Chapter 14717, Acts of 1931, the Board was constituted exclusively of five landowners in the District.

The questions before the Court upon defendants' motions to dismiss the original and supplemental bills of complaint, as amended, and plaintiffs' motion for interlocutory injunction, are whether or not the legislation of 1929 and 1931 here complained of (Chapters 13633 and 14717, supra), as well as official action taken or threatened pursuant to that and prior

legislation, impairs the obligation of plaintiffs' bond contracts, in the following respects:

First. By diminishing the tax upon which plaintiffs are entitled to rely for the payment of their bonds.

Second. By relieving the Board of Commissioners of Everglades Drainage District of their alleged obligations to pay annually into the sinking fund for the retirement of the District bonds sufficient funds of the District to pay the annual maturities.

Third. By relieving the Trustees of the Internal Improvement Fund of the obligation claimed to rest upon them under Chapter 7305, Acts of 1917, par. 3, to purchase and pay for certificates representing unpaid drainage taxes of the District when there are no other bidders at the tax sales.

Fourth. By authorizing certificates of indebtedness, issued by the Board of Commissioners of Everglades Drainage District to the Trustees of the Internal Improvement Fund under Section 65 (b) of Chapter 14717, to be used in payment of drainage taxes assessed against the public lands in the District owned by said Trustees.

Fifth. By authorizing the Board of Commissioners of the District to receive bonds and interest coupons of the District in redemption of certain tax certificates issued for unpaid drainage taxes of the District.

Sixth. By constituting the Board of Commissioners of five civilian members instead of the state officers who originally, and when all now outstanding bonds were issued, composed the Board.

Chapter 6456, supra, establishing the District (Section 530 et seq., Comp. Gen. Laws Fla. 1927), authorizes the Board of Commissioners to construct a system of canals, drains, levees, dykes, etc., and to maintain the same, in such manner as the Board shall deem advantageous to drain and reclaim the lands in the District.

For the purpose of constructing, completing, and maintaining those works, that Act (Sec. 5) directly imposed

upon the lands in the District a graduated tax on an acreage basis; the land being zoned for the purpose. By numerous amendments (see Section 1534, Comp. Gen. Laws Fla. 1927), the plan of zoning has been altered and the acreage taxes increased from time to time as the bonded debt of the District was increased. Vital changes in this respect were provided in the Acts of 1929 and 1931, supra.

By Chapter 8412, Acts of 1921 (Section 1592, Comp. Gen. Laws Fla. 1927), an annual ad valorem tax of one mill was levied upon all real and personal property in the District "to be known as a maintenance tax and shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the district."

The lands within the District held by the Trustees of the Internal Improvement Fund are subject to the acreage taxes above mentioned and all other taxes, including, since 1921, maintenance and ad valorem taxes, and the said Trustees of the Internal Improvement Fund, in furtherance of the trust upon which the lands are held, are authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands, or otherwise. (Section 5, Chapter 6456, supra, as amended, now Section 1534, Comp. Gen. Laws 1927).

Section 6 of the Act of 1913, brought forward unaltered as Section 1535, Comp. Gen. Laws 1927, provides that "the proceeds arising from the acreage tax levied by this Article shall be used by the said Board (of Commissioners of Everglades District) in the construction and maintenance of such canals, drains, levees, (etc.), * * * and to the expenses of the Board in the conduct of said work and its business generally, and to repay any loans and the interest thereon, and to the creation of a sinking fund for the retirement of the principal of the bonds that the Board may issue under the provisions of this Article, and to the payment of the interest thereon."

Section 19 of the Act of 1913 originally authorized the Board to issue negotiable bonds not exceeding $6,000,000 outstanding at any time. That Section has been amended from time to time to authorize the issuance of not exceeding $14,250,000, exclusive of those authorized (but never

issued) by Chapter 12016, Acts of 1927, now repealed. No bonds were issued until the original Section 19 was amended by Chapter 6957, par. 10, Acts of 1915, to provide that "nothing herein contained shall be deemed a limitation of the right of the Legislature to authorize additional bonds of said Board, payable from drainage taxes within said District, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or theretofore imposed upon lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds." That Section, as so amended, remained in effect at least as late as 1927. Section 1553, Comp. Gen. Laws of Fla. 1927.

As future issues were authorized (see the Acts cited next hereafter), the acreage taxes were increased to provide funds for retirement of the additional bonds. Under original Section 19, bonds aggregating $3,500,000 were issued during 1915, 1916 and 1917. These have all been retired, in part by payment and in part by refunding bonds issued by authority of Chapter 10027, Acts 1925.

By authority of successive amendments of original Section 19, additional bonds have been issued under Chapter 7862, Acts 1919, Chapter 8413, Acts 1921, and Chapter 1919, Acts 1923, codified as Section 1178, Rev. Gen. St. Fla. 1920, and Section 1553, Comp. Gen. Laws 1927. Chapter 10026, Acts of 1925, authorized $3,000,000 additional bonds which have never been issued. Chapter 10027, Acts 1925, authorized the issuance of refunding bonds, which have been issued to the extent of $3,842,000, and used to refund in part the original issues under the Act of 1913, the issues under the Act of 1919, and the issues under the Act of 1923. There are now outstanding $9,919,000, including the refunding bonds.

The original Act provides that the "faith and credit" of the Board of Commissioners shall be pledged by said bonds. This provision still remains intact. Section 1555, Comp. Gen. Laws Fla. 1927.

Section 23 of the Act of 1913, brought forward unaltered as Section 1557, Comp. Gen. Laws 1927, provides, inter alia: "This Article shall without reference to any other Act of the Legislature of Florida be full authority for the issuance and sale of the bonds in this Article authorized. * * * The provisions of this Article shall constitute an irrepealable contract between the said Board and said Everglades Drainage District and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. * * *"

Section 24 of the Act of 1913, which also has remained in force unaltered, and is now Section 1560, Comp. Gen. Laws 1927, provides: "It shall be the duty of the State Treasurer or his successor in office, as custodian of the funds belonging to the said Board of Commissioners and to the said Drainage District, out of the proceeds of the taxes levied and imposed by this Article and out of any other moneys in his possession belonging to the said Board or to the said Drainage District, which moneys so far as necessary are hereby set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds out of the said moneys to pay the principal thereof, and there shall be and there is hereby created a sinking fund for the payment of the principal of the said bonds, and the said Board shall set apart into such sinking fund annually out of the taxes levied and imposed by this Article, and the other revenue and funds of the said District, at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of the principal of said bonds shall not be appropriated to any other purpose than that herein specified."

These provisions apply to all bonds subsequently issued, as all the subsequent authorizing Acts are amendments of original Section 19 of the Act of 1913 (except the refunding act of 1925 (Chapter 10027) which amends Section 20

of the original Act), and are not unrelated legislation, so that the subsequent amendments became in effect a part of the original Act, thus preserving the contract feature thereof just referred to. Until 1927, whenever additional bonds were authorized by amendment to original Section 19, such action was accompanied by an amendment of original Section 5, or its codification (Section 1164, Rev. Gen. St. 1920), which amendments impose additional acreage taxes by increasing the former rates, so as to provide additional funds, as required by original Section 19, as amended by Chapter 6957, Acts of 1915, hereinabove quoted.

In the several resolutions pursuant to which each series of bonds were issued, the board of commissioners provided for a sinking fund as contemplated by the statute, and further resolved that "there shall in addition be paid into the sinking fund, in time to reasonably pay the principal of said bonds after they mature, the amount of bonds maturing during such year."

Of the $9,919,000 bonds outstanding, the plaintiffs allege that they own "many thousand dollars," and specifically $51,000 principal past due and unpaid, and past-due interest coupons of the several issues aggregating approximately $107,000.

These bonds were all issued by the district and acquired by plaintiffs after the enactment of the legislation already referred to embracing the sinking fund provisions; the provisions for additional taxes to meet additional bonds when authorized; the provision that the statute under which the bonds were issued should constitute an irrepealable contract between the board and holders of the bond and coupons; that all bonds should be of equal dignity and share equally and without prejudice in payment from all drainage taxes then or theretofore imposed; and other statutory provisions to which reference will be made hereafter. See sections 1553 and 1557, Comp. Gen. Laws 1927 (chapter 6456 (19), Acts 1913, and chapter 6957 (10), Acts 1915), hereinabove quoted.

By chapter 13711, Acts 1929, the Florida Legislature established a special tax district, designated as the Okeechobee flood control district, for the purpose of controlling the

flood waters of Lake Okeechobee, the Caloosahatchee river, and vicinity. The original bill of complaint herein alleges that this district as established by the statute is "practically the Everglades Drainage District with some additional territory, and it was created for the purpose of taking over and financing certain improvements which theretofore had fallen within the scope and the powers conferred upon Everglades Drainage District." This act authorizes the issuance of $3,000,000 of bonds and levies acreage taxes upon four defined zones in the district to finance the operation of the district and to retire the bonds.

In 1929 the Florida Legislature also enacted chapter 13633, relating to the Everglades Drainage district, which act, the bill alleges, was a companion bill with the Okeechobee flood district bill, chapter 13711, supra. Chapter 13633, relating to the Everglades drainage district, enacted that, in lieu of all acreage taxes theretofore levied upon the lands in Everglades drainage district, the acreage taxes prescribed in said act of 1929 should thereafter be imposed. The bill of complaint charges that the taxes imposed by this act are at substantially lower rates than those imposed by the statutes under which plaintiffs' bonds were issued.

In section 6 of chapter 13633, it is provided that "there shall be deducted from the taxes hereinabove provided for as to each acre of land within said (Everglades Drainage) District in each year, an amount equal to the sum of money levied for such year upon such land as an acreage tax, under the provisions of An Act of the Legislature of Florida, creating Okeechobee Flood Control District. * * *"

Chapter 13633 further purports to authorize the board of commissioners of Everglades drainage district to reduce the taxes levied by that act in each of the zones proportionately, to the extent of not more than 25 per cent. of the levy provided in said act, and to otherwise adjust such levy.

Section 26 of chapter 13633 provides that for the funding and retiring of the obligations of said district not evidenced by bonds the Everglades drainage district is authorized to issue $3,000,000 additional bonds. The bill alleges that no additional tax is levied to retire these bonds. Examination of the act discloses that new rates of acreage taxes were

prescribed by section 6 of this act, which rates appear to be lower than those fixed by chapter 10026, Acts of 1925, which latter rates plaintiffs' claim have become a part of their bond contract.

Certain portions of chapter 14717, Acts of 1931, as assailed by supplemental bill herein. This act re-zones the district for the purpose of levying acreage taxes, and by sections 7 and 8 prescribes new and exclusive rates of acreage taxes, imposing separately a "Debt Service Tax" for the purpose of paying principal and interest of "all obligations (not merely the bond obligations) of Everglades Drainage District heretofore incurred and now outstanding"; and an "administration Tax" for the purpose of paying costs of administration, the proceeds of these taxes being placed in separate funds limited to those purposes. These are in addition to an advalorem tax of one mill for administration purposes (section 8), and a maintenance tax (section 9). The act purports to authorize the board (section 43) to borrow against anticipated revenue in the administration and maintenance funds, and to pledge these funds to repay such loans.

Section 44 of the act of 1931 forbids the use of any avails of the taxes imposed by sections 7, 8, and 9 for any purpose other than therein prescribed, thereby limiting the participation of bonds in the drainage taxes to that portion of the tax designated as "Debt Service Tax." Section 7 of that act brings into participation of payment out of drainage taxes "all obligations now owing by Everglades Drainage District," but saving (section 44) any existing priorities. It should here be parenthetically observed that the Everglades drainage district has outstanding large obligations not evidenced by bonds.

The supplemental bill alleges that the rates prescribed in the act of 1931, for "Debt Service," are inadequate to meet the bond requirements of the district, and are substantially lower than the former rates, to the continuance of which plaintiffs allege they are entitled. The supplemental bill charges this act to be a plan to divert acreage taxes to other purposes, to the impairment of the plaintiffs' vested contract rights under former legislation; and specifically un-

der the sinking fund provisions of section 24 of the act of 1913 (Comp. Gen. Laws Fla. 1927, par. 1560). Reference will later be made to other provisions of the 1931 act, of which plaintiffs also complain.

(1) Legislation by authority of which bonds are issued, and their payment provided for becomes a constituent part of the contract with the bondholders. Such a contract is within the protection of the Constitution, art. 1, par. 10. The obligation of the bond contract, of which such legislation is a part, cannot be impaired, nor its fulfillment hampered or obstructed, by subsequent legislation to the prejudice of the vested rights of bondholders. This rule has reference to subsequent legislation which affects the contract directly, and not incidentally, or only by consequence. United States ex rel. Von Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403; Board of Liquidation of Louisiana v. McComb, 92 U. S. 531, 23 L. Ed. 623; Louisiana ex rel. Southern Bank v. Pilsbury, 105 U. S. 278, 26 L. Ed. 1090; Wolff v. New Orleans, 103 U. S. 358, 26 L. Ed. 395; Moore v. Otis (C. C. A.), 275 F. 747; Moore v. Gas Securities Co. (C. C. A.), 278 F. 111; Jinkins v. Entzminger (Fla.) 135 So. 785. As was said in United States ex rel. Von Hoffman v. City of Quincy, supra: "A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion."

In addition, section 23 of chapter 6456, supra (section 1557, Comp. Gen. Laws Fla. 1927), specifically provides that "this act" (meaning the Everglades Drainage District Act) shall constitute an "irrepealable contract" between the board of commissioners and holders of bonds issued under the act. Contracts of this nature have been held impaired by subsequent legislation undertaking to lower the former statutory basis of assessment, Town of Samson v. Perry (C. C. A.), 17 F. (2d) 1; or to divert proceeds of assessments from the payment of obligations to pay which they were levied, Moore v. Otis (C. C. A.), 275 F. 747; Nelson v. Pitts, 126 Okl. 191, 259 P. 533, 53 A. L. R. 1137.

(2) An impairment occurs when the value of the contract has been diminished by subsequent legislation. The ques-

tion of impairment is not one of degree, but of encroaching in any respect upon the obligation-dispensing with any part of its force. United States ex rel. Van Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403; Green v. Biddle, 8 Wheat. 84, 5 L. Ed. 547; Bank of Minden v. Clement, 256 U. S. 156, 41 S. Ct. 408, 65 L. Ed. 857; Farrington v. Tennessee, 95 U. S. 679, 683, 24 L. Ed. 558, 559; Planters' Bank v. Sharp, 6 How. 301, 12 L. Ed. 447.

It is significant that, until the act of 1927, the symmetry of the original act of 1913 was retained, additional bonds having been authorized, and increased acreage taxes levied to pay the same—not by unrelated legislation—but by successive amendments of sections 19 and 5 of the original act, or sections of the Revised General Statutes in which they were codified.

(3, 4) Though the state cannot by contract surrender its sovereign prerogatives in the performance of essential governmental duties (Contributors v. City of Philadelphia, 245 U. S. 20, 38 S. Ct. 35, 62 L. Ed. 124), nevertheless, when the state authorizes a taxing subdivision to contract by issuing bonds and to exercise the power of local taxation to the extent necessary to meet such obligations, the power thus given cannot be withdrawn so long as its exercise is necessary to satisfy the vested rights of bondholders. In such cases, the state and the subordinate taxing unit are equally bound. "The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute." United States ex rel. Von Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403; Board of Liquidation of Louisiana v. McComb, 92 U. S. 531, 23 L. Ed. 625; Galena v. Amy, 5 Wall. 705, 18 L. Ed. 560; Mobile v. Watson, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620; Jinkins v. Entzminger (Fla.) 135 So. 785; State of Louisiana ex rel. Nelson v. Police Jury 111 U. S. 716, 4 S. Ct. 648, 28 L. Ed. 574; Rorick v. Board (D. C.), 27 F. (2d) 377.

(5) In Trustees v. Bailey, 10 Fla. 112, 81 Am. Dec. 194, it was held upon the same principles here under consideration that, at the instance of holders of bonds issued under the Internal Improvement Act of Florida of January 6, 1855, the trustees of said fund would be enjoined from ap-

propriating any portion of that fund to purposes other t
those named in the act so as to endanger the bondhold
security, even though such other appropriation be c
manded by a subsequent act of the Legislature. In that c
it is aptly said: "The State is as capable of making a c
tract as an individual is, and when made is as much bo
by it."

(6) The board of commissioners here contends that
Legislature may now appropriate a portion of the acre
taxes to the payment of administration expenses, and
other obligations of the district, as provided in the act
1929 and 1931.

Although section 6 of the act of 1913 provides in gen
terms that the proceeds of the acreage taxes levied by
tion 5 shall be used, amongst other things, to pay the "
pense" of the board in "its business generally," that
tion also provides that such proceeds shall be used to cr
a sinking fund for the bonds. Section 24 of the Act of 1
specifically and in detail provides that the proceeds of
acreage taxes and any other revenue of the District shal
used to pay interest on the bonds and to create a sink
fund for the retirement of the bonds, and that there s
be paid into this sinking fund annually not less than 2
cent of the amount of outstanding bonds. Said fund,
far as necessary for the purpose, are expressly "set ap
and appropriated." Appropriation of these moneys
any other purpose is expressly prohibited. The refere
to "expenses" in Section 6 is general, but the provision
the sinking fund, found in Section 24, is specific and m
datory, qualifying pro tanto the general language of S
tion 6. If it be assumed that section 6 invests the Board
Commissioners with authority to use proceeds of the dra
age taxes for administration expense or to pay its unbon
obligations, it is clear from the rigid language of Sect
24 that the Legislature did not intend such authority to
exercised to the prejudice of these specific interest and si
ing fund provisions, for which purposes these funds
specifically appropriated and segregated, and the st
treasurer mandatorily and unconditionally directed to

ply them. See People v. Brooks, 16 Cal. 11, text 28, 30; 6 R. C. L. 334.

Payment of administration or other expenses or obligations out of acreage taxes levied to pay bonds issued under Section 19, and its amendments, is at least limited to the residue of such funds after first meeting the interest and sinking fund requirements.

A similar legislative construction is discernible in the passage in 1921 of Chapter 8412, providing a separate ad valorem tax which "shall be used for maintenance, repairs, upkeep, and any other general or necessary purpose of the District." Section 1 (Comp. Gen. Laws Fla. 1927, par. 1592). This Act was passed a little more than five years after the first bonds were sold, when the necessity for substantial maintenance expense was probably first encountered, and this additional tax was then provided to meet such expense.

(7) Moreover, the Act of 1913 pledged the "faith and credit" of the District for the payment of the bonds, which in effect, with bonds payable from the sources here involved, pledges the resources of the District. Duval Cattle Co. v. Hemphill (C. C. A.), 41 F. (2d) 433, 438. The Board of Commissioners by resolution, pursuant to which each series of bonds was issued, bound itself unconditionally to pay into the sinking fund sufficient moneys to pay the annual maturities. As the statute fixed only a minimum requirement for the sinking fund, these resolutions were within the Board's authority, and are a part of the bond contract.

(8, 9) We hold, therefore, that the provisions of Chapter 6456, Acts 1913, and its several amendments pursuant to which plaintiffs' bonds were issued and acreage taxes to pay the same were levied, constitute a contract between plaintiffs and the District; that the legislation imposing acreage taxes to pay those bonds and interest, which was in effect when the bonds were issued, cannot be withdrawn, nor can the proceeds of such taxes be diverted to other purposes, so long as such proceeds are necessary to pay interest and create a sinking fund as prescribed by Section 24 of Chapter 6456, now Section 1560, Comp. Gen. Laws 1927,

and the several resolutions of the Board, all of which are parts of the bond contract. We further hold that the proceeds of the acreage taxes and other funds of the District (except the ad valorem tax under the Act of 1921) are specifically appropriated (Lainhart v. Catts, 73 Fla. 735, 75 So. 47, text 54; Bannerman v. Catts, 80 Fla. 170, 85 So. 336; State v. Allen, 83 Fla. 214, 91 So. 104, text 105, 24 A. L. R. 735), and pledged to the extent and for the purposes just mentioned; the appropriation and pledge continuing so long as these funds are necessary to meet the requirements of the bonds issued pursuant thereto. It is the duty of the state treasurer and of the Board of Commissioners to devote said funds to the purposes named, as far as may be necessary, before using any part thereof for any other purpose.

If, as urged by the Board, it would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same.

(10) The Board cites numerous cases, such as White v. Mayor of Decatur, 119 Ala. 476, 23 So. 999; City of East St. Louis v. U. S., 110 U. S. 321, 4 S. Ct. 21, 28 L. Ed. 162; and Clay County v. U. S., 115 U. S. 616, 6 S. Ct. 199, 29 L. Ed. 482 (See, also, 44 C. J. 1374), to the effect that, where the principal and interest of bonds constitute a charge upon general revenue of a city or county, such charge operates only upon surplus revenues after paying necessary operating and governmental expenses. But those cases are not in point. Neither the functions of the Everglades Drainage District, nor the purpose of its organization, are analogous to those of a city or county. The District is not for general governmental purposes, but it is a "statutory subdivision * * * for special governmental purposes"; namely, for local improvement purposes. The acreage taxes are not "general revenue" for purposes of "general government", within the sense of the cases last cited, but are "special assessments" imposed solely to pay "for benefits to accrue from the public improvement." Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449, text 464, 468; Bannerman v. Catts, 80 Fla. 170, 85 So. 336.

The consequences of the differences pointed out are well defined in Village of Kent v. U. S. (C. C. A.), 113 F. 232, which is a complete answer to this contention. See, also, Lainhart v. Catts, 73 Fla. 735, 75 So. 47, text 52. Nor in the cases cited by the Board was there a specific segregation of the bond funds and a requirement that they be disbursed for designated purposes, as there is here. It is held in Florida that even general creditors of a municipality, holding claims secured by general taxation, may enforce their claims by mandamus where there is a fund on hand out of which payment is authorized and required, and which is sufficient for the purpose. State ex rel. N. Y. Life Ins. Co. v. Curry (Fla.), 139 So. 891, opinion filed Feb. 16, 1932.

(11, 12) The Board also contends that, as the acreage taxes are special assessments based upon benefits, the Legislature has the inherent power to redetermine the benefits at any time and to reduce or vary the special assessments accordingly. As respects the taxpayer alone, the Legislature may undoubtedly do so. Bannerman v. Catts, 80 Fla. 170, 85 So. 336. But the power of taxation must be exercised consistently with the principles which preserve the inviolability of contracts. Graham v. Folsom, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464; Mobile v. Watson, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620. The taxing power cannot be exercised so as to impair the obligation of contracts by directly abrogating or diminishing the means by which contracts, entered into in reliance upon such taxing power, can be performed. Louisiana ex rel. Southern Bank v. Pilsbury, 105 U. S. 278, 26 L. Ed. 1090; United States ex rel. Von Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403; Jinkins v. Entzminger (Fla.) 135 So. 785. If the assessment levied in any instance exceeds the benefits, the taxpayer, in the absence of waiver or estoppel, may secure appropriate judicial relief by the force of constitutional principles applicable to that situation, and bondholders would have to abide the consequences, as they took their bonds with notice that they are payable from special assessments. We are here concerned, however, with a voluntary reduction by legislative or administrative action, to the alleged impairment of plaintiffs' contract rights as a bondholder. We are

not here concerned with the validity of any of these Acts as taxing measures.

(13) It becomes material to now determine what rates of acreage taxes, as levied by the several Acts, are within the obligation of the bond contracts of these plaintiffs.

Plaintiffs contend that they are entitled to the rates levied by Chapter 10026, Acts 1925, which are substantially higher than those imposed by the Act of 1923, and prior acts. Chapter 10026 is an amendment of Sections 1160, 1164, and 1178, Rev. Gen. St. 1920, which Sections are, respectively, a codification of Sections 1, 5 and 19 of the original Act of 1913, as amended. Chapter 10026 altered the boundaries of the District; authorized the issue of $3,000,000.00 additional bonds; and, conformably to the requirements of Chapter 6957, Acts of 1915 (Section 10), provided additional taxes by increasing the former rates of acreage taxes. These additional bonds have never been issued. Plaintiffs contend that, notwithstanding that fact, the refunding bonds issued pursuant to Chapter 10027, Acts 1925, some of which plaintiffs own, were by the latter Act constituted "an obligation of equal dignity with any and all other bonds heretofore, or that may hereafter be, issued against and by said District," thereby placing these refunding bonds on a parity of obligation and payment with other bonds, from which the plaintiffs conclude that "the refunding bonds were issued and sold in reliance upon the rate of taxation imposed by Chapter 10026," thereby constituting the rates fixed by the latter Act of part of the bond contract as to the refunding bonds.

Although the refunding bonds are on a parity of obligation and payment with the other bonds of the district, we do not concur in the view that plaintiffs have acquired a vested contract right in the rates fixed by Chapter 10026. Plaintiffs purchased their bonds (except the refunding bonds, which will hereafter be dealt with) when the rates fixed by the Act of 1923, or prior Acts, were in effect, and in reliance upon the rates fixed by those Acts,—not upon the 1925 Act. To the extent of the increase in rates prescribed by Chapter 10026, those rates are in the nature of an offer or proposal to prospective bondholders who may purchase

bonds in reliance upon such increase. That offer has not been accepted, as no additional bonds authorized by Chapter 10026 have been issued. This situation is contrary in that respect to the facts in Louisiana ex rel. Southern Bank v. Pilsbury, supra, wherein the plaintiffs' bonds were acquired after, and in reliance upon, the supplemental Act increasing the levy. To the extent of the increase over the former rates, the additional taxes levied by Chapter 10026 do not constitute a specific trust fund for the benefit of plaintiffs' bonds, as was the case in Baring v. Dabney, 19 Wall. 1, 22 L. Ed. 90, upon which plaintiffs rely, but to the extent of such increase they constitute "additional taxes" to pay the "additional" bonds authorized by the Act, which is all that is required in the plaintiffs' bond contract, this particular phase of which rests in Chapter 6957, par. 10, Acts of 1915. We are not now concerned with what the situation may be if and when additional bonds are issued by authority of Chapter 10026. Until some of the additional bonds authorized by Chapter 10026 are issued and sold, there is no consideration for the increased rates therein provided, and such increases do not come into operation as a part of the Board's contract with existing bondholders who acquired their bonds in reliance upon the rates fixed by prior acts. Until additional bonds are sold pursuant to the 1925 Act, the rates fixed by that Act are a potential—not a vested—right as to the holders of bonds issued under prior Acts. United States v. County Court (C. C.) 2 F. 1.

The same is true as to the rates fixed by Chapter 13633, Acts 1929, under which $3,000,000 additional bonds were authorized but never issued.

(14) Nor does the issue of refunding bonds under Chapter 10027 bring into operation the increase in rates provided in chapter 10026, so as to give plaintiffs a vested right in such increase. Chapter 10027 is not an amendment of original section 19, which relates to the issue of bonds and additional bonds. It is an amendment of orignal section 20, which relates to redemption (and denomination) of bonds. These refunding bonds are in lieu of other bonds outstanding under the 1923 act and prior acts, which former bonds were retired pro tanto by the proceeds of these refunding

bonds. There is no authority in this act to fund or refund any obligations of the district other than existing bonds and interest thereon. The indebtedness of the district, therefore, was not increased, nor was any additional indebtedness created by the refunding bonds. Their issue was a renewal (See Davis v. Dixon, 98 Fla. 87, 123 So. 536, text 538; State v. Weinrich, 291 Mo. 461, 236 S. W. 872) of an existing debt which had been incurred in reliance upon the rates of taxation fixed by the 1923 act, and prior acts. The refunding bonds are therefore not "additional" bonds within the sense of chapter 6957 (section 10) Acts of 1915, so as to require the levy of "additional" taxes, although such refunding bonds are of equal dignity with all other outstanding bonds and are entitled to parity of payment out of the sinking fund hereinabove referred to. No specific increase in tax rates having been levied or authorized in the refunding act, the tax levies applicable to the retired bonds apply also to the refunding bonds by which the former bonds were retired.

(15) We hold, however, that the tax levy imposed by chapter 9119, Acts of 1923, the latest act pursuant to which plaintiffs' bonds (other than refunding) have been issued, is a part of plaintiffs' bond contract. As against the district and its managing officers, plaintiffs are entitled to the continued levy of drainage taxes as fixed by that act, or their equivalent, so long as necessary to pay interest and provide a sinking fund as required by section 24 of the original act of 1913 (section 1560, Comp. Gen. Laws 1927) and by the resolutions of the Board pursuant to which plaintiffs' bonds were issued. Whatever may be the judicially determined rights of taxpayers in respect to the assessments against their lands, voluntary legislative or administrative action which has the effect of directly diminishing the potency or benefits of the act of 1923, either by reduction of taxes or diversion of proceeds to administration or other purposes, impairs the obligation of plaintiffs' contract. United States ex rel. Von Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403; Board of Liquidation of Louisiana v. McComb, 92 U. S. 531, 23 L. Ed. 625; Galena v. Amy, 5 Wall. 705, 18 L. Ed. 560; Trustees v. Bailey, 10 Fla. 112, 81 Am. Dec. 194; Jinkins v. Entzminger (Fla.) 135 So. 785.

(16-20) We hold, therefore, that section 26 of Chapter 13633, Acts 1929, to the extent that it purports to authorize the issuance of $3,000,000 additional bonds, is inoperative as against these plaintiffs, unless the taxes therein levied are a sufficient increase over those fixed by the act of 1923 to pay the additional bonds. Whether or not they are is a question of fact. We further hold that section 6 of chapter 13633, in so far as it purports to fix acreage taxes, or to authorize the board to make deductions (on account of Okeechobee flood control district or otherwise) or reductions below those imposed by chapter 9119, Acts 1923, or a substantial equivalent thereof, or to otherwise diminish the funds provided by the act of 1923 for the payment of bonds issued pursuant to that and prior acts, is inoperative as against these plaintiffs. Sections 7 and 8 of chapter 14717, Acts 1931, and those portions of sections 43 and 44 of said section 14717, which purport to fix acreage taxes and to create an administration fund from the proceeds of acreage taxes, are also inoperative against the plaintiffs in so far as those sections result in reducing or diverting the proceeds of drainage taxes so that the amount thereof available for interest and sinking fund requirements for outstanding bonds will be less than under chapter 9119, Acts 1923. Nor may the proceeds of the administration fund be pledged pursuant to section 43 (d) to the prejudice of interest and sinking fund requirements to which plaintiffs are entitled. Moreover, those portions of sections 7 and 44 (b) of Chapter 14717, which purport to bring into participation of payment from the proceeds of acreage taxes obligations of the district other than bond obligations, are likewise inoperative as against these plaintiffs until all interest and sinking fund requirements for said bond obligations, as hereinabove adjudicated, have been fully met.

(21) Section 70 of chapter 14717 purports to authorize the issuance of district bonds for the purpose of refunding any "bond, note certificate of indebtedness, or other obligation now outstanding, for the payment of which the credit of * * * District is pledged" subdivision (a), but levies no additional tax. The district now has outstanding large obligations not represented by bonds. So far as bonds may

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be issued under this section for the sole purpose of refunding existing bonds issued pursuant to the act of 1913 and its amendments, plaintiffs' bond contract would not be impaired. The same situation would obtain as with the refunding bonds issued under chapter 10027, hereinabove discussed. Section 70 (i) purports to make these refunding bonds payable from the debt service fund provided in sections 7, 43, and 44 of the act, which fund in turn is derived from acreage taxes. In so far as the issue of bonds might be attempted under this section for the purpose of paying "notes, certificates of indebtedness or other obligations" of the district, such bonds would be funding—not refunding—bonds. While the indebtedness of the district might not be thereby increased, nevertheless, as against these plaintiffs it would bring into participation of payment out of acreage taxes what, as to the plaintiffs, would be "additional" bonds payable from acreage taxes, unaccompanied by the levy of additional taxes sufficient to pay the same, contrary to chapter 6957, Acts 1915, section 10, and, to the extent that such bonds were issued for any of the purposes last named, such action would be an impairment of plaintiffs' contract obligation. While under section 6 of the original act there would seem to be no objection to the use of acreage taxes to pay unbonded indebtedness after the sinking fund requirements of section 24 have been fully met, the issue of additional bonds without the levy of sufficient additional taxes to pay the same is forbidden, as against bondholders, by chapter 6957, Acts 1915, section 10, and there is a reasonable basis for the distinction.

(22) An argument is made in plaintiffs' briefs as to the validity of the unit district plan provided in sections 10 to 42, inclusive, of the act of 1931, and the issuance of further bonds thereunder, but as these sections are not assailed by the bill of complaint, we do not consider them.

(23) This disposes of the first and second questions hereinabove stated. We now take up the third.

Under section 12 of the original act of 1913, when lands in the district were sold for non-payment of drainage assessments, and when there were no bidders at the sale, the

ax collector was required to bid off such land for the board of commissioners of Everglades drainage district.

The bill of complaint alleges that, after the sale of bonds under the act of 1913, as amended in 1915, it was required as a condition of the purchase of additional bonds by buyers that the last-mentioned provision of section 12 be changed, and that accordingly chapter 7305, Acts of 1917, was enacted, section 3 of which (section 1541, Comp. Gen. Laws 1927) amends section 12 of the original act of 1913, and provides: "* * * In case there are no bidders, the whole tract (upon which drainage taxes are unpaid) shall be bid off by the tax collector for the trustees of the Internal Improvement Fund, and shall be held by said trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State, as now provided by law." Section 4 of Chapter 7305 provides that the tax collector shall issue a tax certificate to the trustees of the internal improvement fund as of the date of sale, "and if the land is not redeemed on or before two years from the date of such certificate, the title to the same shall immediately vest in the said Trustees without the issuing of any deed as provided in other cases, and the certificates held by the said Trustees shall be evidence of the title of the said Trustees." Chapter 10024, Acts 1925, and chapter 14717, Acts of 1931, purport to alter the redemption period. The trustees are authorized to sell and convey such lands, and the proceeds thereof "shall be applied by said Trustees in payment of drainage taxes or assessments, or other obligations of said Trustees." Tax certificates held by the trustees may be redeemed within the time prescribed, and the amount paid upon such redemption is remitted to the trustees. Chapter 7305, par. 5, Acts 1917 (Comp. Gen. Laws 1927, par. 1547).

Under then existing laws, when state and county taxes were unpaid, the lands were sold, and if there was a private purchaser, a certificate was issued to him, for which he was required to pay at the time of the purchase. Section 974, Comp. Gen. Laws Fla. 1927. In t absence of a private purchaser, the lands were bid off to the state, no payment

being required by the state, future taxes against such lands being omitted until a redemption occurred. After two years the private purchaser could apply for and receive a deed. When land was bid off to the state, title thereto vested in the state two years after the issuance of the certificate, but the lands remain subject to redemption until a tax deed is issued to a private purchaser who might purchase the certificate from the state and, after two years from the date of the certificate, apply for a deed.

Viewing the history of this legislation in the light of the allegations of the bill of complaint, it appears that by 1917 it had become apparent that drainage taxes might remain unpaid to such an extent that funds of the district would be insufficient to meet bond requirements if additional bonds were issued, and that, before additional bonds would be salable, it would be necessary to guard against such a situation. This was undertaken by requiring the trustees of the Internal Improvement Fund, instead of the Board of Commissioners, to become the purchasers of all tax certificates for which there was no other purchaser, thus preventing tax default and consequent depletion of the district fund available for interest and sinking fund requirements. The provisions of the Act of 1917 relating to the trustees are harmonious with the purposes of the Internal Improvement Fund as defined by Chapter 610, Acts 1855. See Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449.

Although the Act of 1917 does not in terms require the trustees to "pay for" the certificates bid in for them, it is obvious that such was the legislative intent. No purpose is evidenced to make a gift of these lands to the trustees. According to the allegations of the bill, the trustees have so construed the Act by paying for such certificates, and paying subsequent drainage taxes on certificated lands, until 1927, but not since.

Nor does the Act of 1917 in express terms fix the time when the trustees shall pay for their certificates. The Act of 1917, requiring all lands for which there were no other purchasers to be bid in for the trustees, must be construed in pari materia with other parts of the 1913 act, of which the act of 1917 is an amendment. By Section 13 of the

original act, which has remained unaltered (see section 1542, Comp. Gen. Laws 1927, also chapter 14717, par. 56 (d), when lands are sold for taxes, the tax collector must require immediate payment "by any person to whom any parcel of such land may be struck off. * * * "The Act of 1917 requires the tax collector to issue tax certificates to the trustees at the time of sale, just as to any other purchaser. Although section 17 of the original act provided that proceeds of redeemed certificates should be paid to the board of commissioners, the amendatory act of 1917 provides that, when certificates bid in for the trustees are redeemed, the proceeds of such redemption shall be remitted to the trustees. There would seem to be no occasion for the latter provision, unless the Legislature contemplated that the trustees should have previously paid for the certificates. Otherwise, the proceeds of redemption should go to the district as its property. No legislative intent is evidenced by the act to postpone payment by the trustees for their certificates beyond the time fixed for payment by other purchasers, and we see no sufficient reason why the act should be so construed. Although the word "person" is frequently held not to embrace public governmental bodies, such as cities and counties, we see no reason why that word as used in section 13 of the original act—of which the act of 1917 is amendatory—should not apply to the trustees, dealing as it does, not with governmental affairs, but with business transactions in connection with contract rights. The provisions of the Act of 1917, section 3 (Comp. Gen. Laws 1927, par. 1541) that lands bid off for the Trustees "shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State" merely analogizes the two situations with respect to the status of the lands during the redemption period, the vesting of title when lands are not redeemed the further sale of tax certificates by the trustees to private persons, and the like. That the state does not under general tax laws pay for lands bid off to it, does not, in view of the provisions of original section 13 of the Ever-

glades Act, relieve the trustees from paying for the certificates bid off for them as indicated.

We hold, therefore, that chapter 7035, Acts of 1817, is a part of the contract with bondholders, furnishing an additional measure of security upon which they are entitled to rely, and that it is the duty of the trustees of the Internal Improvement Fund to pay for drainage tax certificates immediately when the lands are bid off for the Trustees. This refers, of course, to certificates representing unpaid drainage taxes, the levy of which is a part of the bond contract. This disposes of the third question. We now take up the fourth.

(24, 25) By Section 5 of the original act, as amended (section 1534, Comp. Gen. Laws 1927), lands within the district "held" by the trustees of the Internal Improvement Fund are subject to drainage taxes, and the trustees are authorized and empowered to pay the same, "in furtherance of the trusts upon which the said lands are held," the latter referring to the grant under the Swamp Land Congressional Act of 1850. In section 48 of the Act of 1931, this provision is brought forward and the language of the corresponding former provision is emphasized by adding that these lands shall be subject to taxes "in same manner as privately owned lands." It is conceded that public lands held by the trustees and which have never been disposed of are subject to these taxes, but as to lands reacquired by the trustees through tax sales pursuant to chapter 7305, Acts 1917, section 4, the trustees deny liability for subsequent taxes.

The Act of 1917 (section 4) provides that, when lands are bid off for the trustees, a tax certificate shall immediately issue in the name of the trustees "and if the land is not redeemed on or before two years from the date of such certificate, the title to the same shall immediately vest in the said Trustees * * * and the certificates * * * shall be evidence of the title of the said Trustees." The Trustees are authorized to sell such lands, execute a deed therefor, "as other deeds made by them are signed and shall vest in the grantee * * * the fee simple estate

to such lands.". The proceeds of such sales, including any profits realized, are the property of the trustees and are to be devoted to the obligations of the trustees, including drainage taxes. If tax certificates held by the trustees are redeemed, the proceeds of the redemption go to the trustees to be used as required by law.

These and other provisions, when adjusted to their proper perspective in relation to the entire Everglades Legislation, lead us to hold that, so far as the bond contract is concerned, lands thus bid in for the trustees (commonly referred to as "certificated" lands) become "lands within the Everglades Drainage District 'held' by the Trustees of the Internal Improvement Fund," within the meaning of section 5 of the original Act, two years after the date of the certificate, when title vests in the trustees if the certificate be not sooner redeemed.

As these provisions are a part of the bond contract, it is the duty of the trustees to pay drainage taxes levied on such lands from and after the time when title vests in the trustees pursuant to the acts under which plaintiffs' bonds were issued, such payment to be made from funds derived by the trustees from "the use or sales of swamp and overflowed lands held by the trustees * * * under the trusts declared in chapter 610, Acts 1854-1855 * * * and subsequent amendatory and supplemental statutes." Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449, headnote 3. Although the powers and duties of the trustees are subject to legislative control, the trustees cannot, even by legislative direction, execute a later trust to the direct prejudice of contract rights of third parties in the execution of a prior trust. Trustees of Internal Imp. Fund v. Root, 59 Fla. 648, 51 So. 535.

(26) Although all lands bid off for the non-payment of taxes remain charged with the lien of subsequent taxes (Chapter 7305, par. 2, Acts 1917, Comp. Gen. Laws 1927, par. 1531), which would include lands bid off to the trustees, we discover no duty imposed by the statute upon the trustees to pay drainage taxes during the two years that the tax certificate is pending and subject to redemption, as the lands are not during that period held by the trustees within the

meaning of section 5 of the original act, but are held "in like manner and with like effect as lands sold to the State for non-payment of State and County taxes." Section 3, chap. 7305 (section 1541, Comp. Gen. Laws 1927).

(27) If it were not the recognized legislative intent that the trustees should pay taxes on certificated lands after title thereto vests in the trustees, it is strange that for fourteen years—from 1917 to 1931, no legislative attempt was made to so declare. The bill of complaint alleges, also, that the trustees paid these taxes until 1927. That subsequent taxes are omitted and not paid by the state upon lands for which it holds tax certificates under general taxation statutes does not by analogy relieve the trustees of their obligation just stated, in view of the express provisions of section 5 of the original act, as amended (Comp. Gen. Laws 1927, par. 1534).

(28) We also hold that under the act of 1917, so far as the rights of these plaintiffs are concerned, tax certificates issued to the trustees are held by them in their own right as trustees of the Internal Improvement Fund under chapter 610, supra, and not in trust for the Board of Commissioners.

(29) By sections 56 (c), 65 (a), and 65 (b) of chapter 14717, Acts 1931, it is enacted that, when there are no other bidders at tax sales the lands shall be struck off for the Board of Commissioners (not to the trustees of the Internal Improvement Fund, as has been the case since 1917); that tax certificates now held by the trustees, resulting from tax sales of former years, are held by said trustees in trust for the Board of Commissioners; that the trustees shall assign to the board all such tax certificates now in the hands of the Trustees, to receive compensation therefor from the Board; and that any sum of money found to be owing from the Board to the Trustees by reason of such assignment may be paid by the relinquishment by the Board of its rights in such tax certificates as may be agreed upon, and for any balance then remaining the Board may issue its certificates of indebtedness to the Trustees, which certificates of indebtedness shall be receivable by the Board of Commissioners from the trustees, or from any person who shall thereafter purchase lands within the district, in payment of drainage taxes

upon lands which at the enactment of the statute were held, or may hereafter be held, by the trustees, and that such certificates of indebtedness shall be liquidated as they are presented in payment of drainage taxes upon such lands. The effect of these provisions is to entirely destroy duties and obligations now and heretofore resting on the Trustees which are a part of plaintiffs' security and one of plaintiffs' remedies against default in payment of their bonds.

In the view we have taken of chapter 7305, Acts 1917, as it relates to the trustees of the Internal Improvement Fund, the three last-mentioned sections of the Act of 1931, for obvious reasons, impair the obligation of plaintiffs' bond contract, and as to the plaintiffs are inoperative. Barnitz v. Beverly, 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93; Moore v. Gas Securities Co. (C. C. A.) 278 F. 111; Moore v. Otis (C. C. A.) 275 F. 747; In re Cranberry Creek Drainage Dist. 202 Wis. 64, 231 N. W. 588.

Section 67 of the 1931 Act is also assailed by the supplemental bill, but, as that section depends for its operation upon the validity of other sections which we have held inoperative, it is unnecessary to consider that section in detail. This disposes of the fourth question.

(30) As to the fifth: Section 71 of the Act of 1931 enacts that "in the redemption of land from tax certificates which shall be transferred to the Board under the provisions of this Act, and in the redemption of land which shall be sold to the Board for the non-payment of the taxes assessed for the year 1930," the person entitled to redeem may pay the amount requisite for redemption with bonds of the district, or interest coupons, at par. This section does not purport to extend that privilege to the redemption of certificates held by the trustees, nor to the redemption of lands sold to the trustees. Operation of the latter provision of the section depends upon the existence of one of the two conditions recited in the first part of the section. As we have held that the provision for the transfer of outstanding tax certificates by the trustees to the board and the provision for future certificates to be bid off for the board are both inoperative as against these plaintiffs, it leaves no field in which section 71 may lawfully operate, because, as against these plaintiffs,

there can be no certificates assigned by the trustees to the board and no lands struck off to the Board, until the requirements of plaintiffs' bond contract are satisfied. We therefore do not express an opinion as to how far, if at all, the Legislature may authorize the payment of drainage taxes, or the redemption of tax certificates from their lawful owners, with bonds in lieu of cash.

(31, 32) As to the sixth question: The provisions of the 1931 Act, changing the personnel of Board of Commissioners to five civilians in lieu of five state officers as originally provided, impairs no vested contract right of plaintiffs. The district remains, with officers empowered to perform all its duties toward bondholders. Neither the resources nor the remedy for the payment of plaintiffs' bonds are affected within the purview of the contract clause of the Constitution. A mere change in personnel of a public board or body is not usually regarded as an impairment of contract obligations. See State v. Knowles, 16 Fla. 577; Graham v. Folsom, 200 U. S. 248, 26 S. Ct. 245, 50 L. Ed. 464; Mobile v. Watson, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620; State v. Goodgame, 91 Fla. 871, 108 So. 836, 47 A. L. R. 118; Board v. Phillips, 67 Kan. 549, 73 P. 97, 100 Am. St. Rep. 475; 1 Cooley Const. Lim. (8th Ed.) p. 560; 12 C. J. 1008.

Interlocutory injunction will issue conformable to the views here expressed.

BRYAN, Circuit Judge (dissenting in part):

I dissent from so much of the majority opinion as holds the trustees of the Internal Improvement Fund liable to pay for tax certificates issued upon the failure of landowners to pay drainage taxes. The trustees in my opinion hold the certificated lands in trust for the bondholders and other creditors of the drainage district. The Compiled General Laws provide that lands upon which drainage taxes are delinquent may be sold, and if there is no private bidder, shall be "bid off" by the tax collector for the trustees to be held by them for the two-year period allowed for redemption "in like manner and with like effect as lands sold to the State for non-payment of State and County

taxes are held by the State." Comp. Gen. Laws 1927, par. 1541. In the case of a sale for non-payment of ordinary state and county taxes, if there are no private bidders, the land is bid off by the Tax Collector for the State. Section 972. Two years are allowed for redemption, but the owner may redeem at any time before the land is sold to another. Hightower v. Hogan, 69 Fla. 86, 68 So. 669. When land in the drainage district has been bid off for the trustees for the non-payment of drainage taxes, the title vests in the Trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and, in the event of such a sale but not otherwise, the trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of section 1, c. 9119, Laws of 1923, subjecting land within the drainage district held by the trustees to drainage taxes, refers to land owned by the Trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the Legislature to bind the Trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the Legislature intended to impose a burden as great as it here contended for merely because it adopted existing provisions of law applicable to the holding and disposition of lands by the state upon default in the payment of ordinary taxes.

Upon the other questions involved, I concur in the opinion of the majority.

EXHIBIT "B".

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, PENSACOLA DIVISION.

IN EQUITY.

H. C. RORICK *et al., Plaintiffs,*

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, etc., *et al., Defendants.*

William Roberts of New York, Watson & Pasco & Brown of Pensacola, Florida, for plaintiffs.

Fred H. Kent of Jacksonville, Florida, for defendant Board of Commissioners of Everglades Drainage District.

George Cooper Gibbs, Attorney General; Marvin C. McIntosh, Assistant Attorney General; W. P. Allen, Assistant Attorney General; H. E. Carter, Assistant Attorney General, Tallahassee, Florida, for defendants Trustees Internal Improvement Fund.

Before Foster, Circuit Judge, and Strum and Long, District Judges.

Per CURIAM:

This is the second appearance of this cause before a three judge statutory court. The cause was presented first to Honorable Nathan P. Bryan, United States Circuit Judge, and District Judges Sheppard and Strum. An application was made for interlocutory injunction which was granted by the three judge court upon the giving of bond. The plaintiffs having failed to give the bond no interlocutory injunction was issued. The opinion in the case was written by Judge Strum, 57 Fed. (2nd) 1048. The opinion was concurred in by United States District Judge Sheppard, United States Circuit Judge Bryan dissenting in part.

It appears that all of the questions presented at this time were passed on in the former hearing, and particularly those

estions reaching to the constitutionality of Acts of the gislature of Florida enacted subsequent to the issuance d purchase of the bonds, the court holding that obligation contract is impaired when its value is diminished by subquent legislation; that legislation providing for the issuce of the bonds, for the creation of sinking fund for the irement of bonds, for the payment of interest, became d were part of the bond contract; that statutes fixing new inage district acreage taxes and creating administration nds from the proceeds were inoperative against holders outstanding district bonds so far as such diversion reced tax proceeds available for payment of bond interest d principal. In fact, the court held in substance that all sequent legislation that impaired the bond contract was constitutional and void. This opinion, so far as the Fedl Statutory Court was concerned, settled the main quesn now presented to this court, that the Trustees of the ernal Improvement Fund were not by subsequent legision relieved of their obligation to pay subsequent special inage taxes on lands in Everglades Drainage District off for said Trustees for non-payment of district drain- taxes.

The opinion in this case was written April 13th, 1932. Subquent to that date supplemental bills have been filed comining of the several Acts of the Legislature undertaking effect the bond issues and the manner provided for their yment, and the case is now before this court upon an plication to reinstate the former interlocutory order and the granting of an interlocutory injunction at this time, d upon motions of defendants to dismiss the bill and pplemental bills.

The same questions presented here have been passed on the Supreme Court of the State of Florida, particularly question of whether or not the Internal Improvement nd Trustees, should pay for tax certificates issued on vately owned land within Everglades Drainage District en such lands are bid off to Trustees.

Circuit Judge Bryan dissenting in part form the major- 57 Fed. (2d) 1048, quoted by Supreme Court of Florida,

State ex rel. Board of Commissioners of Everglades Drainage District vs. 150 So. 878,

"When land in the drainage district has been bid off for the trustees for the non-payment of drainage taxes, the title vests in the trustees, but they hold it subject to the owner's right of redemption which continues until the land is sold. The sale must be for at least as much as accrued taxes, and, in the event of such a sale, but not otherwise, the trustees are required to pay the delinquent drainage taxes. If they were purchasers in their own right, their obligation to pay would naturally arise as of the date of the tax sale, and would not be conditioned on a future sale. The provision of section 1, c. 9119, Laws of 1923, subjecting land within the drainage district held by the trustees to drainage taxes, refers to land owned by the trustees in their own right, and not to land held in trust under tax certificates. If it had been the intention of the Legislature to bind the Trustees as purchasers of land upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. It is not to be inferred that the Legislature intended to impose a burden as great as is here contended for merely because it adopted existing provisions of law applicable to the holding and dispositions of lands by the state upon default in the payment of ordinary taxes."

The Supreme Court of Florida, in passing upon this particular question, was unable to agree with the majority opinion in this case of Rorick v. The Board of Commissioners of Everglades Drainage District, 57 Fed. (2d), but adopted the dissenting opinion of United States Circuit Judge Bryan, holding that Internal Improvement Fund Trustees need not pay taxes on privately owned land within Everglades Drainage District when such lands are bid off to Trustees, until lands have been sold or redeemed, but Trustees hold certificated land and certificates in trust for Commissioners of Drainage District.

From an examination of the case of Martin v. Dade Muck Land Company, 95 Fla. 530, 116 So. 449; State ex rel. Sherrill v. Milam, et al., 113 Fla. 491, 153 So. 100; State ex rel. Board of Commissioners of Everglades Drainage District

v. Sholtz, 112 Fla. 756, 150 So. 878; Everglades Drainage District et al. v. Florida Ranch and Dairy Corporation, 74 Fed. (2d) 914, it appears that the Supreme Court of Florida has passed upon the questions presented to this court adverse to plaintiff, and notwithstanding the decision in the Rorick case, 37 Fed. (2d) 1048, this court is bound by the construction placed upon these statutes by the highest court of the state. Erie Railroad Company v. Harry J. Tompkins, J. S. Supreme Court.

The motion to reinstate the former interlocutory order is denied.

The motion for interlocutory injunction now sought is denied, and the bill and supplemental bills dismissed.

This the 2d day of August, A. D. 1938.

(Sgd.) RUFUS E. FOSTER,
United States Circuit Judge.

(Sgd.) LOUIE W. STRUM,
United States District Judge.

(Sgd.) A. V. LONG,
United States District Judge.

Presented Nov. 22, 1938.
AUGUSTINE V. LONG,
Judge.

Received Aug. 4, 1938; Wm. Logan Hill, Clerk.